

Human Resources Committee

25th September 2006



Early Retirement and Voluntary Redundancy – Draft Discretionary Compensation Regulations 2006

Report of Stuart Crowe, County Treasurer, Lesley Davies, Acting Director of Corporate Services and Kim Jobson, Head of Human Resources

Purpose of Report

- 1 To review the County Council's Early Retirement Scheme, its Statement of Policy under the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006 (described here as the Compensation Regulations) and its policy discretion under Section 52 of the Local Government Pension Scheme (LGPS) Regulations 1997.

Background

- 2 The Compensation Regulations require amendment from 1st October 2006 to correspond with the effective date of the Employment Equality (Age) Regulations 2006 (Age Regulations).
- 3 The Local Government Employers (LGE) has now issued an advisory bulletin on the implications of the Compensation Regulations and the requirement that all authorities develop a policy that will comply with the Age Regulations. All staff terminations due to early retirement (ER) with or without voluntary redundancy (VR) from 1st October 2006 onwards will need to be in accordance with the Compensation Regulations 2006 and have regard to the Age Regulations.

Timescale

- 4 The guidance from the LGE is that, although the Compensation Regulations will not be finalised until after the Parliamentary summer recess, they will have statutory force from 1st October 2006. Authorities are therefore advised to have revised policies in place by that date in anticipation of the 2006 Regulations.
- 5 It is essential that the Committee has a policy in place by 1st October 2006, despite the extremely tight timescale, as there needs to be clarity

and continuity in respect of ER/VR proposals that are brought forward for agreement after this date.

The Regulation Changes

- 6 The existing Compensation Regulations contain three key discretionary powers with regard to ER/VR, and the impact of the 2006 Regulations on each of these is described in the paragraphs below.

(A) The power to increase statutory redundancy payments

- 7 In circumstances of redundancy, the statutory redundancy payment ceiling (maximum 30 weeks based on age and service x £290 currently) can be enhanced to a maximum of a week's pay x up to 30 weeks (using a matrix deriving from the Employment Rights Act, based on age and service to arrive at the number of weeks). The County Council currently limits the pay element of the enhanced calculation to a maximum of scp 41 (grade PO6 maximum, currently £32,487p.a. or £623 p.w.)

- 8 The 2006 Regulations retain the discretionary power to waive the weekly pay ceiling placed on statutory redundancy payments and therefore to calculate a voluntary redundancy payment on up to a week's actual pay.

- 9 The Government intention in the 2006 Regulations is to continue to calculate redundancy pay by reference to this matrix based on age and service under the Employment Rights Act 1996. In the Age Regulations, Regulation 33 exempts from age discrimination the use of age in the redundancy payment calculation.

(B) The power to give discretionary (lump sum) compensation for redundancy

- 10 Under the existing Regulations, discretionary compensation for redundancy can be awarded in lieu of added years and inclusive of any redundancy payment. This is a payment based on actual pay x a maximum of 66 weeks, using a more generous matrix based on age and service. The County Council currently uses this option sparingly. Staff reductions in Adult Services residential establishments have, in the past, been facilitated by use of this power, for example. This was because many of the staff affected either were not in the LGPS, or did not generate enough compensatory added years for this option to be attractive to potential volunteers.
- 11 The new Regulations replace the above with a power to compensate staff whose employment is terminated with a payment that must not exceed 2 year's pay (104 weeks). Authorities will have more flexibility

to determine an appropriate level of compensation, as there is no prescribed method of calculation based on age and service.

(C) The power to award a credited period (added years) by way of compensation, in lieu of a discretionary lump sum

- 12 Under the existing Regulations, a maximum of 10 compensatory added years can be awarded, constrained by age 65 and a maximum of 40 years service inclusive of the added years. The County Council limits its maximum award to between 0 and 6 $\frac{2}{3}$ rd years derived from a matrix based on age and service. Added years are awarded only where there are significant net savings from each proposal, taking all costs into account.
- 13 The 2006 Regulations do not include the power to pay added years. Both the Government and the LGE point out however that authorities can continue to award additional years of pension on termination, by means of the augmentation provisions in the LGPS Regulations.
- 14 As a result of the advice of Government and the LGE, we have therefore reviewed the County Council's policy on augmentation, to allow for the award of added years under the LGPS where appropriate. The appropriate change to this employer discretion under Regulation 52 is described at Appendix 4.

Implications of the Age Regulations

- 15 Compliance with the Age Regulations impacts on our current policy and procedures in two ways. Firstly, in circumstances where an offer is made to a large group of staff, say because of service reductions or rationalisation, it will no longer be possible to limit the offer to those over 50, as this would be directly discriminatory.
- 16 Secondly, if we continue to calculate compensation offers in the event of redundancy by means of a formula using age as a criterion, we would need to be satisfied that our policy is compliant with the Age Regulations. There are two ways in which using age can comply:
 - (i) Reliance on the exception in Regulation 33 of the Age Regulations, by basing payments on the statutory formula on redundancy.
 - (ii) The employer must be able to objectively justify the policy on the grounds that it pursues a legitimate aim and that it is proportionate. If an Authority wishes to reflect age in its policy the LGE consider that legitimate aims may include:

- a. compensating older workers for the disadvantage that they may face in the labour market, having been made redundant. We would emphasise that, in the context of an offer of ER/VR made to all staff in a particular group, if this was a uniform offer to all, then significant interest may come from younger members of staff, who perhaps have more up-to-date skills and qualifications and would be confident about finding another job. In HR terms this could lead to a drain on the future skills base of the organisation.
 - b. rewarding loyalty, as it may be perceived unfair to compensate those with little service at the same level as those who have been with the employer for many years. There may be staff retention and staff morale issues here, particularly in the light of our 'caring employer' objective.
- 17 In drafting the Age Regulations the Government appears to have recognised the 'loyalty' issue. In these Regulations and in their Explanatory Memorandum issued by the Department of Trade & Industry (DTI), the Government recognises the benefits of length of service and indicates that it is justified to provide exemptions in relation to pay and non-pay issues that are based on length of service.
- 18 The LGE makes the point that the proposed 104 week rule does give an authority flexibility to adopt an 'individual case on its merits' approach, but recognises that this unstructured approach to ER/VR policy conflicts with:
- the statutory requirement to publish and keep under review a policy on how the discretions within the Regulations are to be exercised.
 - the need for an equitable, transparent and defensible approach when dealing with a large-scale redundancy situation.

The need for a discretionary ER/VR policy

- 19 If the County Council decided, in formulating a new policy, not to exercise any of the discretions available to it, staff reductions due to service rationalisation or budget reductions would ultimately have to rely on compulsory redundancy. At present compulsory redundancy is adopted only where sufficient volunteers for ER/VR have not been forthcoming. Compulsory redundancy is an undesirable (if sometimes necessary) course of action that should only be used as a last resort for the following reasons:
- (i) It requires statutory notices, lengthy selection processes and trade union negotiations, which delay the achievement of savings and the implementation of rationalisation schemes.

- (ii) Further costs are incurred in that those selected usually have an entitlement to 12 weeks paid notice of termination.
 - (iii) Those over 50 and in the LGPS, as stated above, have automatic entitlement to unreduced accrued pension entitlement in the same way as volunteers for early retirement. There is no way of avoiding this cost due to the provisions of the LGPS Regulations.
 - (iv) For lower paid and/or part-time staff, statutory redundancy payments are the same as those available for voluntary redundancy.
 - (v) The negative effect on relationships with the trade unions and on staff morale.
 - (vi) Public perception.
- 20 A proactive discretionary policy on staff severance issues is therefore highly desirable, if not essential.

Early Retirement Policy Review

- 21 As stated above, the County Council is required to review its discretionary policy with an effective date for any changes being 1st October 2006. We have undertaken this review, and a proposed revised County Council early retirement scheme and a statutory statement of policy, is at Appendix 2 and Appendix 3 respectively.
- 22 The revised policy has been drafted with a view to compliance with the Age Regulations. We propose that the policy be based to a large degree on the existing arrangements, but with adjustments to comply with the new legislation, and also taking the opportunity to tighten up on elements of the existing Scheme. On this basis the main elements of the policy proposed is set out below.

Redundancy or Efficiency of the Service

- 23 We need to emphasise that a pre-requisite of any offer of compensation is that, taking into account all costs and savings arising from the proposal, there must be a net saving to the County Council. In circumstances where a redundancy is confirmed, and suitable alternative employment cannot be found, a voluntary redundancy payment would be made, using the statutory redundancy formula that is exempt under the Age Regulations. We propose to continue with a ceiling at PO6 (£32,487 p. a., £623 per week) on the weekly pay calculation.
- 24 In redundancy and efficiency cases the offer would be made in conjunction with an offer of added years service, using powers under the LGPS Regulations to augment service. In accordance with DTI guidance on the Age Regulations, this would be based on Local

Government service and references to age in the formula would be removed. The applicant must be a member of the LGPS to be eligible for this. We propose that there is a reduction in the maximum award payable to 4 years as opposed to the current 6 & two-thirds, with a more simple service-based scale on the following lines:

Local Government Service	Added Years Of Pension Awarded Under The LGPS Regulations
0 - <5	0
5 - <10	1
10 - <20	2
20 - <30	3
30 and over	4

- 25 For those approaching age 65, the award would have to be limited to ensure that employees do not acquire aggregate pensionable service that is more than they would have received at age 65 without this offer.
- 26 As an alternative to a redundancy payment and/or added years as above, a discretionary compensation payment could be made. This would be based on the statutory redundancy formula, which would comply with Regulation 33 of the Age Regulations. On the advice of the LGE, we propose that to arrive at the maximum amount payable under this rule we apply a multiple of 2 to this formula, which produces a maximum of 60 weeks pay, slightly less than the existing 66 weeks. (This again, when allied to the use of the statutory redundancy formula, represents a considerable tightening of the existing policy.) 104 weeks would be permissible under the draft 2006 Regulations. We would further propose that, for reasons stated above, this type of compensation offer should only be used where a combination of voluntary redundancy and added years would not be effective in achieving a sufficient number of volunteers for redundancy (as was the case in the example in Adult Services referred to in paragraph 10 above). Amounts calculated under this formula would be the maximum that would be payable in each case.

Summary of Proposed Changes

- 27 The following table summarises the current position, the powers available to the County Council and the proposals to take effect from 1st October 2006:

Existing Policy	Powers available on 1 st October 2006	Proposed Policy
<p><i>Voluntary Redundancy:</i></p> <p>Enhance weekly statutory redundancy pay to actual pay, but with a ceiling at the maximum of grade PO6</p>	<p>Enhance weekly statutory redundancy pay to actual pay</p>	<p>No change to existing policy</p>
<p><i>Added Years:</i></p> <p>Table based on age and service, with a maximum of six & two-thirds years</p>	<p>Power available derived from the LGPS, not the Compensation Regulations. Maximum available six & two-thirds years</p>	<p>Under the LGPS Regulations, table based on Local Government service with maximum of four years</p>
<p><i>Alternatively, discretionary compensation for redundancy:</i></p> <p>Table based on age and service, with a maximum of 66 weeks actual pay</p>	<p>Maximum of 104 weeks actual pay</p>	<p>Maximum of 60 weeks actual pay, calculated using the statutory redundancy table with a multiple of two</p>

Applications Initiated by the Employee

- 28 A small number of early retirement requests arise on compassionate grounds or where an employee has other personal reasons to retire early. As the employees concerned initiate these, they usually do not involve efficiencies for the service and therefore normally do not involve savings. It is the County Council's policy that these applications are considered

individually on merit, taking into account the potential cost to the Pension Fund of early release of pension. Compensation payments or added years are not appropriate in these cases, and no changes are required or proposed in the current policy on this.

Recommendations and Concluding Remarks

- 29 The Committee is recommended to agree to the proposals in this report, and specifically to confirm, from 1st October 2006:
- a) The revised Early Retirement Scheme as at Appendix 2
 - b) The statement of policy required under the draft Compensation Regulations 2006 as at Appendix 3
 - c) The change to the employer's discretionary policy under Regulation 52 of the LGPS Regulations, as at Appendix 4
- 30 The draft Compensation Regulations 2006 will not be on the Statute Book until after the Parliamentary recess. If there are changes to the Statutory Instrument that require amendments to the above proposals, in view of the timescales involved the Committee is asked to delegate to the officer signatories of this report, in consultation with your Chair and Vice-Chair, the responsibility to finalise the documents at paragraph 29.
- 31 We are consulting the trade unions on the changes proposed in the report. We will report any outcomes at the meeting.

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Appendix 1: Implications

Finance

One purpose of the ER/VR policy is to facilitate net savings, and these changes will mean that the cost of compensation will be reduced.

Staffing

The purpose of this policy is to enable staff reductions and service rationalisation by voluntary means.

Equality and Diversity

One objective of the new policy is Age Regulation compliance.

Accommodation

None

Crime and disorder

None

Sustainability

None

Human rights

None

Localities and Rurality

None

Young people

None

Consultation

Consultation with trade unions in progress

Health

None

Durham County Council**Early Retirement Scheme****Effective from 1st October 2006****Purpose**

- 1 The purpose of this document is to outline the County Council's policy on early retirement, with or without redundancy. The key objective is to manage in a business orientated way issues related to the rationalisation of services and staff reductions, and to minimise the extent to which the County Council has to resort to compulsory redundancy.

Powers

- 2 The County Council will use where appropriate the powers available to it under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England & Wales) Regulations 2006 (known here as the Compensation Regulations) and the Local Government Pension Scheme Regulations 1997 (as amended) (known here as the LGPS Regulations).

Coverage of the Scheme

- 3 This Scheme covers both types of early retirement proposal that the County Council as an employer has to deal with. These are early retirement on the grounds of redundancy or efficiency, and those that are initiated by the employee.

Redundancy or Efficiency Grounds

- 4 Proposals involving voluntary redundancy will be made where this is the only reasonable alternative to compulsory redundancy, i.e. where attempts to find alternative employment of a similar and appropriate type have been exhausted. For proposals based on redundancy the Head of Human Resources would need to confirm that a post is redundant and that this post is deleted from the establishment of the service.
- 5 Redundancy for the purposes of the LGPS includes retirement in the interests of efficiency, and, where it is confirmed that these circumstances are met, accrued pension benefits under the LGPS are payable immediately.
- 6 In these circumstances, in order to provide sufficient encouragement for employees to volunteer for redundancy, the following benefits will be offered, with the essential proviso that each proposal results in clear and demonstrable savings to the County Council after taking into account all

the costs involved (in some circumstances, in order to achieve a saving, a lesser offer may be made):

- 7 (a) A voluntary redundancy payment calculated by reference to the redundancy payment matrix under the Employment Rights Act 1996. This provides for a payment based on 30 weeks statutory redundancy pay, and the County Council will exercise its power to use actual pay in the calculation of weekly pay, subject to a ceiling of scp 41 (the maximum increment of grade PO6). The voluntary redundancy payment would be inclusive of the statutory redundancy sum that would otherwise have been paid in the event of a redundancy; and
- (b) For those employees who are members of the LGPS, augmentation of service (added years) in accordance with the scale below based on the aggregate local government service of the employee. Added years awarded will, where appropriate, be restricted to ensure that an employee will not be put in a position of having more pensionable service than if she/he had continued in pension scheme membership until age 65.

Years of Local Government Service	Added Years
0 - <5	0
5 - <10	1
10 - <20	2
20 - <30	3
30 and over	4

- (c) Normally in circumstances where sufficient volunteers for redundancy cannot be obtained following an offer of voluntary redundancy together with augmentation of pension under the Local Government Pension Scheme Regulations, or where such an offer is not likely to be effective or cannot be made, discretionary compensation for redundancy may be payable. The County Council may exercise its discretion to pay compensation not exceeding a sum equivalent to 60 weeks actual pay.
- (d) The calculation of the number of weeks of actual pay in each case would be based on the redundancy payment matrix under the Employment Rights Act 1996 (also used in the calculation of voluntary redundancy payments as above). However, in the discretionary compensation calculation, the number of weeks derived from this table would be multiplied by 2, and then applied to unrestricted actual weekly pay.

- (e) Discretionary compensation if awarded would be inclusive of any statutory or voluntary redundancy payment, and is only payable where there is no proposal to augment (award added years to supplement) pension under the LGPS.

Applications Initiated by the Employee

- 8 A small number of early retirement requests arise on compassionate grounds or where an employee has other personal reasons to retire early. As the employees concerned initiate these, they usually do not involve efficiencies for the service and therefore normally do not involve savings. It is the County Council's policy that these applications are considered individually on merit.
- 9 Where there are no savings for the County Council it is not possible to consider compensation payments or added years. There is often, however, depending on the circumstances of the applicant, a cost to the Pension Fund of allowing early release of pension, borne ultimately by the employer, and so each case needs to be carefully justified and considered.
- 10 Where pension benefits would potentially be reduced because the applicant does not meet the 'rule of 85' (her/his combined age and service in whole years is less than 85) applications may be considered with the option of waiving on compassionate grounds the potential reduction, under the provisions of the LGPS, but this would add to the cost of the proposal.
- 11 Applications made by employees on compassionate grounds or otherwise must be backed by supporting evidence, including medical evidence where appropriate, and these will not proceed for decision until such evidence is made available.

Reporting and Decision Making

- 12 In accordance with Audit Commission guidance, the Early Retirement Sub-Committee of Human Resources Committee determines each application for early retirement, with or without redundancy. Each application is considered on its merits.
- 13 In cases involving redundancy and efficiency, proposals are unlikely to be agreed unless there are clear and demonstrable savings arising from service rationalisation and/or a reduction in the number of posts. There needs to be net savings from each proposal, after allowing for consequential costs and the costs of severance. The cost of severance may include:
 - (a) Initial costs, i.e. the cost of redundancy or of discretionary compensation in lieu of redundancy and added years.

- (b) Annual costs, i.e. the annualised costs, calculated actuarially, of early access to pension and of added years.
- 14 In accordance with good practice, together with a statement of the annual costs and savings arising from a proposal, the estimated payback period will be reported in each case. This represents the predicted time it will take for net annual savings to repay the initial costs of termination, calculated in years. Each case must report a payback period of less than three years.

Eligibility

- 15 The following eligibility restrictions apply, based on existing legislation:
- (a) Applicants must have two years continuous local government service before a redundancy payment or a related discretionary compensation payment can be made.
 - (b) An augmentation (added years) award cannot be made unless applicants are members of the LGPS.
 - (c) Applicants who are under 50 cannot have pension benefits released (but they can be awarded added years, which would be deferred along with accrued pension).

Notice Waiver

- 16 Where any early retirement is agreed in accordance with this Scheme, either on the basis of redundancy or efficiency, or where it is has been initiated by an employee, it is on condition that the employee so volunteering for early retirement will waive her/his rights to the notice period stated in her/his contract of employment, and agree to a termination date set by the County Council.

Relevant Definitions

- 17 (a) The definition of 'weekly pay' in the calculation of voluntary redundancy and discretionary compensation payments will be as laid down in the Employment Rights Act 1996, but with the modifications set out in the Compensation Regulations.
- (b) The definition of 'continuous Local Government service' in the calculation of voluntary redundancy and discretionary compensation will be as laid down in the Redundancy Payments (Continuity of Employment in Local Government, etc) Modification Order 1999.

- (c) The definition of 'Local Government service' in the calculation of augmentation of service (added years) will be service with all employers specified in the Redundancy Payments (Continuity of Employment in Local Government, etc) Modification Order 1999. Service will be aggregated and does not need to be continuous for this purpose.

Guidelines for Chief Officers

- 18 A separate procedural note will be produced to describe the steps that services need to take in dealing with the implications of service rationalisation and staff reductions, and to outline the process to be followed in dealing with applications for early retirement.

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DURHAM COUNTY COUNCIL**The Local Government (Early Termination of Employment)
(Discretionary Compensation) (England and Wales)
Regulations 2006****Statement of Policy on Discretions which may be granted
under the above Regulations****Review Effective from 1st October 2006****1. Purpose**

- 1.1 The above Regulations require the County Council to formulate, publish and keep under review the policy that it maintains in the exercise of its discretionary powers under paragraphs 5 and 6 of the Regulations.
- 1.2 This policy document explains how the County Council will exercise the discretions available to it under these Regulations effective from 1st October 2006.
- 1.3 The objective is to properly manage the severance arrangements for employees in circumstances where voluntary redundancy and early retirement in the interests of the efficiency of the service need to be considered.
- 1.4 In formulating the statement below, regard has been taken of the need to ensure that the policy is workable, affordable and reasonable.

2. Eligibility

- 2.1 All County Council employees who are Local Government Pension Scheme members, or who would be but for a relevant disqualification (as defined in the Regulations), and whose employment is terminated by reason of redundancy, are eligible to be considered for benefits in accordance with the policy discretions set out below.
- 2.2 Where there are clearly demonstrable savings arising from an efficiency proposal that does not involve redundancy, employees may also be entitled to compensation in these circumstances, but each case would be considered on its merits.

3. Power to Increase Statutory Redundancy Payments

- 3.1 Entitlement to a redundancy payment under the Employment Rights Act 1996 is subject to a ceiling on the weekly pay element of the calculation. In cases of voluntary redundancy the County Council will exercise its discretion to base entitlement on actual salary, but subject to a maximum of grade PO6 (point 41 on the National Joint Council salary spine).

3.2 In circumstances of voluntary redundancy, payment would normally be calculated on the basis of weekly pay (as stated at 3.1 above, restricted to a maximum of spinal column point 41); continuous local government service up to a maximum of 20 years; and a maximum of 30 weeks pay in accordance with the statutory redundancy pay table. The voluntary redundancy payment would be inclusive of the statutory redundancy sum that would otherwise have been paid in the event of a redundancy.

4. Discretionary Compensation for Redundancy

4.1 The County Council will exercise its power to pay discretionary compensation for redundancy in appropriate cases. This will normally be in circumstances where sufficient volunteers for redundancy cannot be obtained following an offer of voluntary redundancy together with augmentation of pension under the Local Government Pension Scheme Regulations, or where such an offer is not likely to be effective or cannot be made.

4.2 In order to provide sufficient encouragement for volunteers for redundancy or where termination would be in the interests of the efficiency of the service, the County Council may exercise its discretion to pay compensation not exceeding a sum equivalent to 60 weeks actual pay.

4.3 The calculation of the number of weeks actual pay in each case would be based on the statutory redundancy table (also used in the calculation of voluntary redundancy payments as at 3. above). However, in the discretionary compensation calculation, the number of weeks derived from the statutory redundancy table would be multiplied by 2, and then applied to actual weekly pay.

4.4 Discretionary compensation is inclusive of any statutory redundancy payment, and is only payable where there is no proposal to augment (award added years to supplement) pension under the Local Government Pension Scheme Regulations.

5. Notice Waiver

5.1 Where any voluntary redundancy or discretionary compensation payment is agreed in accordance with this Policy Statement, it will be on condition that the employee volunteering for severance will waive rights to the notice period stated in the relevant contract of employment.

6. Determination of Severance Proposals

6.1 All proposals for severance arrangements involving County Council employees, where voluntary redundancy or discretionary compensation payments are being recommended, will be determined by the County Council's Early Retirement Sub-Committee of the Human Resources Committee.

7. Definition of 'Weekly Pay'

- 7.1 The definition of 'weekly pay' in the calculation of voluntary redundancy and discretionary compensation payments will be as laid down in the Employment Rights Act 1996, but with the modifications set out in the Discretionary Compensation Regulations 2006 referred to in the title of this document.

8. Definition of 'Continuous Local Government Service'

- 8.1 The definition of 'continuous Local Government service' in the calculation of voluntary redundancy and discretionary compensation will be as laid down in the Redundancy Payments (Continuity of Employment in Local Government, etc) Modification Order 1999.

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Durham County Council

Exercise of Employer Discretion under the Local Government Pension Scheme

Regulation 52: *Augmentation of Scheme membership*

Existing wording:

Decisions regarding the use of regulation 52 will be made on the merits of each case. The County Council will only consider the augmentation of service under regulation 52 either:

- As an alternative to the award of compensation under the Discretionary Payment Regulations 1996
- On the grounds of compassion
- In exceptional circumstances for long serving employees

Where the County Treasurer and the Director of Personnel Services deem it to be in the interests of the authority and there are sound financial reasons for doing so.

Proposed new wording with effect from 1st October 2006:

Decisions regarding the use of regulation 52 will be made on the merits of each case. The County Council will only consider the augmentation of service under regulation 52 either:

- As part of an exercise involving the potential voluntary redundancy of scheme members and/or
- On occasion where staff rationalisation is being carried out in the interests of the efficiency of a service the County Council provides

Augmentation of Scheme membership will only be granted where the County Treasurer and the Director of Corporate Services deem it to be in the interests of the County Council and there are sound financial reasons for doing so.

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