

Human Resources Committee

16th November 2007



Early Retirement Scheme – The Exercise of Discretion

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 consider ways in which the Early Retirement Sub-Committee can exercise its discretion with regard to early retirement applications and to establish guidelines with regard to the discretions available to the Sub-Committee in accordance with statutory powers.

Background

- 2 Members will be aware that one of the principles involved in administering the Early Retirement Scheme (the Scheme) is that each case is dealt with on its individual merits.
- 3 This serves to ensure that cases of early retirement and voluntary redundancy (ER/VR) are considered with due regard to achieving the most efficient outcome for the County Council. The adoption of a rigid formulaic approach to each case would not be appropriate as it would tend to increase the cost of severance packages.
- 4 The Early Retirement Sub-Committee is responsible for agreeing each case. Unlike many other County Council decisions, this power has not been delegated to Chief Officers, in line with previous guidance that we have had from the Audit Commission.

Discretionary Powers

- 5 The discretionary powers available to the Early Retirement Sub-Committee derive from two pieces of legislation.
 - a) The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006 giving the following powers:
 - i) the power to increase statutory redundancy payments. The County Council's Scheme limits the weekly pay used in the calculation of a redundancy payment to the maximum of grade PO6 (spinal column point 41).

- ii) the power to grant discretionary compensation for redundancy. The Scheme specifies that in certain circumstances a discretionary payment can be made, based on a maximum of 60 weeks actual pay.
- b) Regulation 31(2) of the Local Government Pension Scheme Regulations 1997 (LGPS) states that the consent of the employing authority is required for those proposing to retire between the ages of 50 and 60, and this is at the discretion of the authority. Also, Regulation 31(5) empowers an employer to waive a reduction in pension and retirement grant on compassionate grounds.
- c) Regulation 52 of the LGPS empowers an employing authority to increase the service of an employee who leaves his or her employment after age 50. This is known as 'augmentation' or more commonly as 'added years'.

Comment

- 6 Members have asked for guidance on how they should exercise their discretionary powers in this regard. It should be emphasised first of all that it is essential that such guidance is not prescriptive and it would be contrary to the 'on its merits' approach if the discretion of the Sub-Committee was inhibited in any way. To use a legal term, it is essential that the discretion of the Sub-Committee is not fettered.
- 7 Nevertheless, there are some criteria which should be taken into account as part of the decision making process. Relevant factors include the following:
 - a) Firstly it is essential that the decision made could not be regarded as discriminatory in any way. A major concern here is the potential for challenge on age discrimination grounds. So for example it may not be appropriate to limit an award of added years simply because it would cause the number of pensionable years of the applicant to exceed 40. Particularly if such a proposal was being considered alongside other applications, this could be regarded as discriminating against older members of staff who happen to have longer pensionable service. It is particularly important that, if an added years award is to be scaled back, the same approach should be adopted for all applicants subject to the same rationalisation proposal.
 - b) Discretion on added years in individual cases must take into account the total cost of the proposal. For example, if the cost of early access to pension is particularly high, as it would be for those employees who are well short of age 60, then it may be appropriate to consider an award of less added years than the maximum prescribed in the Scheme. Again, care would be needed with this to ensure that there are no discriminatory aspects here.

c) Added years should only be granted in a situation where there is a clear business case and significant savings available to the County Council. Often, this will apply where there are redundancies involved. It is essential that the Scheme is driven with a business-like approach, with the emphasis on achieving savings in the most expedient way and also on improving the operation of the area of business in question.

8 Members are asked to bear in mind, when considering issues of discretion, that the scope for such discretion is in any event now more limited than it was previously. Members may recall that the Scheme was last reviewed only in 2006 and as a consequence the maximum number of added years available was reduced from 6 $\frac{2}{3}$ to 4. Members may recall that maximum added years are now based on years of local government service as shown in the following table:

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

9 As part of the remit of the Early Retirement Sub-Committee, members also need to consider whether to exercise discretion in a limited number of compassionate grounds cases. The Scheme specifies that, as such cases are considered along 'good employer' lines and there is no business case as such, added years are not awarded in such cases.

10 Again, the cost of compassionate grounds cases is paramount in determining whether such cases should be approved. Options available to members in such cases are usually as follows:

- Refuse the application.
- Agree the early release of benefits on an actuarially reduced basis.
- Agree the early release of benefits without reduction.

11 In such cases, before exercising discretion, it is essential that members are provided with full details of the case. This will include, where appropriate, medical reports and/or details related to the financial circumstances of the applicant.

Concluding Remarks and Recommendation

12 For the reasons given above, it is important that the Scheme retains enough flexibility so that the unique circumstances of each application can be taken into account. The Scheme must not therefore be too prescriptive as this will be a barrier to the efficient exercise of the functions of the Early Retirement Sub-Committee.

- 13 In summary, when considering the exercise of discretions, members need to have the following in mind:
- (i) The need to be seen not to discriminate, having particular regard to age discrimination given the context involved.
 - (ii) The operational needs of the service.
 - (iii) The costs of the proposal, and particularly the cost to the Pension Fund of early access to pension.
 - (iv) The financial savings arising from the proposal.
 - (v) In cases of compassionate grounds, the medical and/or financial details of each case.
- 14 The Committee is asked to note the report and agree to adopt the attached Guidelines on the exercise of the discretion available to the Early Retirement Sub-Committee.

Contact: John Hope Tel: 0191 383 3367

09 November 2007
mis/rep/kjho27

Appendix 1: Implications

Finance

With regard to applications for ER/VR, the County Council's policy is to ensure that net financial savings arise from each proposal, after taking into account the costs of compensation to employees.

Staffing

The objective of the Scheme is to ensure that staff rationalisation and reductions can be achieved in an effective manner and where possible without resorting to compulsory redundancy.

Equality and Diversity

The Scheme agreed with effect from 1 October 2006 was written with the objective of being equality-proof. In particular care has been taken to ensure that adequate regard is given to the Age Discrimination Regulations.

Accommodation

None

Crime and disorder

None

Sustainability

None

Human rights

None

Localities and Rurality

None

Young people

None

Consultation

None

Health

None



Guidelines on the Exercise of the Discretions available to the Early Retirement Sub-Committee, in accordance with the Early Retirement Scheme

1 Introduction and Purpose

- 1.1 Durham County Council has an approved Early Retirement Scheme (the Scheme) last reviewed with effect from 1 October 2006. The purpose of the Scheme is to ensure the efficient and effective administration of employee severance cases and service rationalisation proposals involving staff.
- 1.2 In addition, the Scheme covers those cases where an application for early retirement is driven by the employee.
- 1.3 The purpose of these Guidelines is to advise members on the context of their decision-making powers in connection with discretions available in administering the Scheme.

2 Underlying Principles

- 2.1 It is County Council policy that each early retirement case or group of applications is considered by the Early Retirement Sub-Committee.
- 2.2 Each application is considered on its merits and decisions related to the application will be made only with regard to the circumstances of the case, but within the parameters set by the Scheme.
- 2.3 It is essential that the discretions available to the Early Retirement Sub-Committee are not fettered in any way.

3 Relevant Criteria

- 3.1 When considering the exercise of discretion, the Sub-Committee needs to have the following criteria in mind:
 - 3.1.1 The need to avoid discrimination, having particular regard to age discrimination given the context of the Scheme.
 - 3.1.2 The operational needs and the efficiency of the service.

- 3.1.3 The costs of the proposal, including the cost to the Pension Fund of early access to pension and the cost of compensation payable to applicants.
- 3.1.4 The financial savings arising from the proposal. In the case of redundancy and rationalisation proposals, it is essential that the net effect of the proposal produces a financial saving, or at worst a nil cost.
- 3.1.5 In cases driven by the employee on compassionate grounds, the full medical and/or financial circumstances of each case.

4 The Discretions available to the Early Retirement Sub-Committee

4.1 Discretions under the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006 are as follows:

- 4.1.1 The power to increase statutory redundancy payments. The Scheme provides for the weekly pay element of the redundancy payment calculation to be enhanced, with a limit of spinal column point 41 (maximum of grade PO6).
- 4.1.2 The power to grant discretionary compensation for redundancy. This discretion can only be exercised in lieu of added years and any payment made under this provision will be inclusive of any redundancy payment. It is the usual practice for this discretion to be exercised sparingly and only where other forms of compensation do not produce sufficient volunteers for early retirement and voluntary redundancy.

4.2 Discretions available under the Local Government Pension Scheme (LGPS) are as follows:

- 4.2.1 Discretion under Regulation 52 to grant added years to employees taking early retirement. The County Council will only consider added years either as part of an exercise involving the voluntary redundancy of LGPS members and/or where there is a staff rationalisation in the interests of the efficiency of the service.
- 4.2.2 The Scheme sets out the maximum added years granted in the following format:

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

- 4.2.3 It should be emphasised here that the added years, as shown above, are less generous than in previous versions of the Scheme, but nevertheless these are to be regarded as the maximum that could be awarded.
- 4.2.4 Under Regulation 31(2) of the LGPS, in cases where the employee drives an application for early retirement, unrelated to service efficiency, the Sub-Committee need to be guided by whether the application involves a cost to the County Council. In normal circumstances, only those applications which are at no cost or are on compassionate grounds should be considered.
- 4.2.5 In cases where there are compassionate grounds the Sub-Committee needs to take into account the full circumstances of the case, which may include medical or personal financial details, as well as the cost to the County Council.

5 Closing Remarks

- 5.1 The above Guidelines set out the legislative background to the discretions available to the Early Retirement Sub-Committee. It must be emphasised that each case that comes to the Sub-Committee has its own unique circumstances, but the Guidelines set out above may help to inform members when considering each case.