

	<p style="text-align: center;">GENERAL PURPOSES COMMITTEE 16th January 2006</p> <p style="text-align: center;">Report from the Director of Finance and Corporate Resources</p>
For Action	Wards Affected: ALL
<p>Discretionary policies under the Local Government Pension Scheme</p>	

Forward Plan Ref:

1.0 Summary

- 1.1 On the 27th September 2006 the General Purposes (GP) Committee agreed that the Council's abatement policy should be amended. In order for this to take place members were informed that a period of consultation with employers that contribute to the Brent pension fund was required under regulation 109 (2) of the Local Government Pension Scheme (LGPS). The consultation has now concluded and members are now asked to formally endorse the new abatement policy.

2.0 Recommendations

- 2.1 That members confirm the decision of this committee on 27th September 2006 that the Council changes its policy on abatement so that, where appropriate in accordance with the methodology in schedule 15 of the Local Government Pension Scheme Regulations 1995, there is a reduction of members' pensions in all cases if they return to employment with a Scheme employer.
- 2.2 That the existing arrangements for appeals against abatement be retained.
- 2.3 That Members note that the Council must publish the new policy and the new policy may not commence until the passage of one month following the date of that publication.
- 2.4 Members note that the new policy only affects pensioners who enter a new contract of employment with a relevant employer after the new policy is implemented.

3.0 Detail

3.1 A working group of officers from Finance & Corporate Resources, Legal and Human Resources reviewed the discretions available to Brent Council under the LGPS and other regulations in 2002. Their proposals, which included the review of the Council's discretions on a three yearly basis, were agreed by the GP Committee on 11th July 2002. Accordingly the group reconvened in 2005 and concluded that some amendment was required to current policies for administrative ease, better member understanding and regulatory compliance. A number of changes to existing policies were proposed to the General Purposes Committee on 27th September 2006 including the change to the abatement policy which is the subject of this report. Legal advice was that the age criteria in the current abatement policy whereby abatement was not applied to pensioners who had retired on the grounds of age (i.e. members over the age of 60) could not be objectively justified under the recent age discrimination legislation.

3.3 Where a pensioner recommences employment with a "Scheme employer" (e.g. another local authority) the Council, as Administering Authority for the Brent Pension Fund may reduce or suspend the pension dependent on its policy.

3.4 The methodology that will be applied when abating a member's pension will be as required under schedule 15 the Local Government Pension Scheme Regulations 1995.

3.5 Example

A pensioner's pension is reduced if the pension paid plus the new salary is greater than the salary earned on retirement (uprated for inflation).

E.g., An employee retired on a salary of £18,000. per annum and receives a pension of £6,000 per annum. If they were re-employed on a salary of £10,000 per annum their pension would be unaffected as they would be receiving £16,000 per annum compared with a salary on retirement of £18,000.

However if their salary in their new job was £15,000 their pension would be reduced by £3,000 per annum.

$(£15,000 + £6,000 = £21,000 - £18,000 = £3,000)$.

3.6 It is a requirement of regulation 109 of the LGPS 1997 that the Council has, and keeps under review, an abatement policy. Regulation 109 also says that in formulating a policy the Authority must consider the following:

- (i) The level of potential financial gain at which they wish abatement to apply

- (ii) The administrative costs which are likely to be incurred as a result of abatement in the different circumstances in which it may occur, and
- (iii) The extent to which a policy not to apply abatement could lead to a serious loss of confidence in the public service.

- 3.7 Currently full abatement of the member's pension applies to all pensioners save those who have retired on voluntary grounds (i.e. on grounds other than ill-health, redundancy or the efficiency of the service) after the age of 60, who are exempt from abatement, and save for those who successfully appeal against abatement. An abatement of pension can occur where the pension paid plus the new salary exceeds the pensioner's salary with the Council on retirement (updated for inflation). Under current policy the Council will reduce the pension by the whole of the amount of this excess. However a right of appeal is afforded to re-employed pensioners whose salary on re-employment is less than £25,000 and who notify the Council of the re-employment in advance of its starting. In such cases a pensioner who can demonstrate special circumstances such as extreme financial hardship or medical reasons can have the amount of the abatement waived up to a maximum of £5,000 per annum.
- 3.8 The rationale behind abatement is to compensate the Pension Fund where a loss to the Fund has occurred due to the member's retirement. For example, in the case of early retirement on the grounds of redundancy future investment of the employee's and the employer's contributions has been lost while the Fund has incurred potential extended liability. Abatement offsets part of this loss for the duration of the second employment.
- 3.9 Officers had considered the need for a fair policy that applied to all members and therefore proposed in the previous report to this committee that all re-employed pensioners should be subject to abatement. They also proposed that the current appeal arrangements are retained so as to allow the Council to continue to take account of special circumstances in particular cases. It was felt that it would be unfair that staff could both receive a pension and pay, whilst others performing the same tasks only received pay. This approach also avoids any financial strain on the pension fund, which is currently in deficit and requiring additional employer contributions to return it to solvency. Issues in relation to Age Discrimination may also arise under the proposed new policy, but this is less likely. A detailed explanation of this point is given in the legal section of this report.
- 3.10 On the 27th September 2006 the General Purposes Committee agreed the change to the abatement policy subject to consultation being undertaken with other employers with active members of the Brent Pension Fund (i.e. the Scheduled and Admitted Bodies) about the proposals as required under regulation 109 (2) of the LGPS. Officers have undertaken that consultation but no responses have been received and it proposed therefore that members agree the change to the abatement policy as recommended in 2.1. Should members agree the new policy it must be published one month prior to the date of its commencement to ensure scheme members are fully informed.

4.0 Financial Implications

- 4.1 In view of the financial position of the fund proposals to exercise discretion are only made where there is likely to be a neutral or positive effect on the fund.
- 4.2 The proposed policy will mean that all pensioners returning to local government employment would be subject to abatement rather than just those who had retired before the age of 60 under the previous policy. As a consequence cases of abatement are likely to increase which will mean that the pension fund will save money.
- 4.3 There will be small increase on the administrative requirements of the pensions service but officers do not believe these will be significant.

5.0 Legal Implications

- 5.1 Under Regulations 3 and 11 of the Employment Equality (Age) Regulations 2006 (as amended) from 1st December 2006 direct and indirect age discrimination in the formulation of policies made under occupational pension schemes will become unlawful. Direct age discrimination involves treating a person on the grounds of their age less favourably than other people are or would be treated. Indirect age discrimination occurs where:
- * A applies to B a provision, criterion or practice which A applies, or would apply, equally to persons not of the same age group as B; and
 - * that provision, criterion or practice puts persons of B's age group at a particular disadvantage when compared with other persons ;
 - * which puts B at that disadvantage; and
 - * A cannot objectively justify the provision, criterion or practice i.e. A cannot show it to be a proportionate means of achieving a legitimate aim. A "proportionate" means of achieving a legitimate aim is one which is appropriate and reasonably necessary i.e. there is not a less discriminatory way of achieving the employer's aim which would be equally practicable for the employer to implement.
- 5.2 If the recommendation in paragraph 2.1 is implemented then there is a risk that the Council would lose a claim for indirect age discrimination brought to the Employment Tribunal by a pensioner member of the Brent Pension Fund aged 60 or more who was subject to abatement. There will be far more members of the Brent Pension Fund aged 60 or more who are receiving an immediate pension as compared with members aged under 60. As a result it may be that the proportion of members of the Brent Pension Fund aged 60 or more who would be subject to abatement would be significantly higher than the proportion of members of the Brent Pension Fund aged below 60 who would be subject to abatement. Whether this is the case would also depend on the number of members of the Pension Fund aged 60 or more and aged below 60 receiving an immediate pension who had been re-employed by a Scheme employer at a salary which was subject to abatement. If there is a significant difference in the proportions as mentioned the proposed policy would put pensioner members aged 60 or more at a particular disadvantage.

- 5.3 In the event of such a challenge the Council might not be successful in objectively justifying the policy. The justification for the policy would appear to be recouping part of the loss to the Pension Fund where the payment of immediate pension would cause such a loss and helping generally to reduce the current deficit in the Pension fund where the payment of immediate pension would not cause such a loss (e.g. where the payment of pension starts on or after the pensioner's 65th birthday). However caselaw under other discrimination legislation which is likely to be applied by the Employment Tribunals in age discrimination cases indicates that cost savings may not on their own be permissible as a "legitimate aim" of a policy for the purposes of justification. Even if the aim of making costs savings in respect of the Pension Fund was accepted as legitimate the Council would have to be in a position to show there were not available less discriminatory but equally practicable steps it could take to achieve those costs savings.
- 5.4 The proposed policy retains the current arrangements for appeals against abatement. There are general administrative law requirements that local authorities' policies should not be rigid but allow for the policy to be departed from in individual cases. Allowing no opportunity for discretion within the Council's policy could lead to a challenge to the Pensions Ombudsman or through the courts which is likely to be successful from a pensioner whose pension had been abated. The Council would then be required to consider the pensioner's case on abatement on its merits. The current arrangements for appeals could still lead to such a challenge from a pensioner denied a right of appeal (i.e. those whose salary on re-employment is £25,000 per annum or more or those who fail to advise the Council in advance of taking up new employment). However given the reasons for the denial of a right of appeal it seems highly unlikely that the challenge would achieve a decision on the merits in the pensioner's favour and in those circumstances a challenge is unlikely to be made.
- 5.5 Given the risk of a successful indirect age discrimination claim being made as mentioned above it would be prudent for the Council to consider allowing an appeal against abatement where indirect age discrimination was being alleged and legal advice was that there was a real risk of the Council losing such a claim. Such circumstances could be treated as an example of special circumstances justifying allowing the appeal.

6.0 Diversity Implications

- 6.1 The review team considered diversity implications of the discretionary policies and an Impact Needs Requirement Assessment (INRA) has been completed for each of the discretions reviewed. Should members confirm the decision that the abatement policy should change the corresponding INRA would be amended. Given the statutory nature of the Local Government Pension Scheme and the fact that the discretions will be applied universally no significant diversity implications are envisaged however.

7.0 Staffing Implications

7.1 No direct staffing implications are envisaged.

8.0 Background Papers

- 1 Report to the General Purposes Committee 27th September 2006
- 2 LGPS Regulations 1995
- 3 LGPS Regulations 1997
4. The Employment Equality (Age) Regulations 2006

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