

# AMENDA AGENDA

## MEMBER AND EMPLOYMENT AND DEVELOPMENT PANEL MEETING



Date: Thursday 7 August 2014

Time: 4.30 pm

Venue: Meeting Room 1C, Maidstone  
House

Membership:

Councillors Mrs Blackmore, Burton, Chittenden,  
Cox, Daley, Greer, Mrs Joy, McKay,  
McLoughlin, Munford, Round, Sargeant  
and Mrs Wilson

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Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Notification of Visiting Members
4. Disclosures by Members and Officers
5. Disclosures of Lobbying

**Continued Over/:**

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**Issued on 4 August 2014**

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*Alison Broom*

**Alison Broom, Chief Executive, Maidstone Borough Council,  
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

6. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
7. Minutes of the Meeting Held on 9 July 2014
8. Report of the Chief Executive - Proposed Changes to Staff Terms and Conditions
9. Report of the Chief Executive - Pension Discretion Policy - update

## **MAIDSTONE BOROUGH COUNCIL**

### **MEMBER AND EMPLOYMENT AND DEVELOPMENT PANEL**

**THURSDAY 7 AUGUST 2014**

### **REPORT OF CHIEF EXECUTIVE**

**Report prepared by Dena Smart**  
**Head of HR Shared Services**

#### **1. PENSION DISCRETION POLICY - UPDATE**

##### 1.1 Issue for Decision

1.1.1 The Pension Discretion Policy was agreed by the Member and Employment and Development Panel (MEDP) at the meeting on 9<sup>th</sup> July 2014. The agreed policy was given to the pension administrators at Kent County Council(KCC) for their records and they have now given feedback that one of the required rules has not been covered in the policy. The MEDP is asked to agree the updated policy at Appendix One.

##### 1.2 Reason for Urgency

1.2.1 The council's policy needs to be accurate to comply with the regulations and as the MEDP does not meet often it is considered appropriate to submit the amendment as soon as possible, the feedback from KCC has only recently been received.

##### 1.3 Recommendation of Head of HR Shared Services

1.3.1 That the MEDP agree the amended Pension Discretion Policy at Appendix One this now includes one additional reference to the regulations as set out below;

#### **TP Regulations 1(1)(c) of Schedule 2 – whether to allow the rule of 85 to be 'switched on' for members age 55-59.**

It is not Maidstone Borough Council's general policy to make use of the discretion to 'switch back on' the 85 year rule protections unless there are clear financial or operational advantages to the council. Each case will be considered on its merits by Head of Human Resources, the Head of Finance and the relevant Director.

1.3.2 The rule of 85 applies to some members who originally joined the LGPS before 2006. It allows members who meet the rule to retire earlier than the normal pension age, taking their pension benefits in full. However, under the LGPS 2014 Regulations certain members would lose some of the rule of 85 protections if they wished to draw their pension benefits between 55 and 59. Hence this discretion allows the protections to be re-instatement by the employer; this will have cost implications for the council so it is recommended that the council's policy would only be to consider this if there was a clear benefit to the council.

1.3.3 Within the Local Government Pension Scheme regulations there are several terms about which each employer must have a policy and this should be communicated to employees within the scheme. If the employer does not have a policy then the pension scheme administrator will either refer every case separately to the employer or default to the minimums set out in the regulations. With the major reform of the LGPS in 2013 the regulations changed and under Regulation 60(1) of the Local Government Pension Scheme Regulations 2013, it is compulsory for all employers to make a policy decision under Regulations 16(2)(e), 16(4)(d), 30(6), 30(8) and 31 and Paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and amendments) Regulations 2014 .

1.3.2 The pension regulations are extremely complicated and the council relies upon the advice of the pension administrators to guide us in the pension discretions policy. To ensure that the policy was accurate the first draft was sent to KCC before it was put before the MEDP in July, however the policy relating to the Transitional Provisions was omitted in error and not identified by KCC; this amendment rectifies the error.

#### 1.4 Alternative Action and why not Recommended

1.4.1 The Member and Employment and Development Panel must ensure that the Council has a policy on these employer discretions. If the Panel did not agree to adopt the amended policy the council would not meet its statutory requirements. The panel could choose to vary the wording of the policy in some way but further advice would need to be taken to ensure that the change did not constitute a breach of the regulations.

#### 1.5 Impact on Corporate Objectives

1.5.1 Failure to amend the existing policy would mean that the Council was not meeting the legal pension regulation requirements.

#### 1.6 Risk Management

1.6.1 There are risks to the Council if it does not have a published policy; the purpose of this paper is to ensure the Council meets this legal requirement.

1.7 Other Implications

1.7.1

1.	Financial	X
2.	Staffing	X
3.	Legal	X
4.	Equality Impact Needs Assessment	
5.	Environmental/Sustainable Development	
6.	Community Safety	
7.	Human Rights Act	
8.	Procurement	
9.	Asset Management	

1.7.2 Financial - All pension scheme changes have some impact on the ultimate cost of the scheme, these have been anticipated within current budgets.

1.7.3 Staffing - These proposals can potentially affect both current and future employees. We have a duty to inform all current members of the pension scheme of the change and this cannot then be implemented until one month and one day after the information has gone out.

1.7.4 Legal - There is a legal requirement for us to have a policy on the Employer Discretions and for this policy to be up to date.

1.8 Relevant Documents

1.8.1 Appendices

Appendix One: Pension Discretion Policy

1.8.2 Background Documents None

**IS THIS A KEY DECISION REPORT?**

**THIS BOX MUST BE COMPLETED**

Yes

No

If yes, this is a Key Decision because: .....

.....

Wards/Parishes affected: .....

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**Maidstone Borough Council  
Policy and Procedural Issues  
Local Government Scheme Regulations  
Employer Discretions**

This paper confirms the pension policy of Maidstone Borough Council as it relates to the exercise of discretions contained in the Local Government Pension Scheme Regulations 2013 and the LGPS (Transitional Provisions, Savings and amendments) Regulations 2014. Last updated June 2014.

The policy statement applies to all members of staff who are eligible to be members of the LGPS, as defined in the regulations i.e. employees with a contract of employment of over 3 month's duration and who are under 75 years of age and are contractually enrolled at the start of employment. Those with contracts of less than 3 months, including casuals, can join but need to elect to do so.

Employees who are members of the pension scheme are only entitled to receive pension benefits if they have 2 years or more service. Under LGPS 2014 Regulation 18, if an employee leaves within 2 years of the start of their employment their contributions can be repaid or transferred to another scheme, unless there is some fraudulent offence or misconduct in connection with the employment

**Principles**

The Authority will treat any individual retirement case and decisions on its merits.

Decisions relating to retirement will be made taking into account the business case and business implications, the financial implications, employment law consideration, the regulations and the legality of each case. It may also take into account long term savings, affordability, skills and skills retention and impact on service delivery.

The definition of business efficiency shall include, but not be limited to financial savings and/or quality improvements judged on a case by case basis.

Each decision will be made free from discrimination on the grounds of any protected characterising – age, disability, gender reassignment, marriage or civil partnership, pregnancy & maternity, race, religion and belief, sex, sexual orientation or any other personal criteria.

The Authority's decisions relating to retirement and the release of pension benefits will be in line with the current pension regulations. These regulations may be updated from time to time and the Authority will default to the regulations if the policy is not explicit on any current or future regulation.

Decisions relating to the release of deferred benefits to former employees will refer to the relevant pension policies applicable at the time of their employment. In such cases, the decision as to the release of deferred benefits will be on a case by case basis and will take into account the criteria detailed in these principles. Guidance may be sought from the pension administrators as required.

**Regulation 9 (1) & (3) - Contributions**

Maidstone Borough Council will apply the nationally determined employee contribution rates and bands. These are subject to change and may be varied.

Maidstone Borough Council will pay the rate of contributions determined in the regulations for employees whose pay is reduced through ill health or during authorised unpaid leave, including child related leave.

The calculation of pensionable pay will include basic annual salary plus any other pensionable salary items including – Market Supplement/ Premium, Overtime, Bonus, Honorarium, Salary Supplements. The pensionable pay will be reviewed monthly and based on earnings for that month to identify the appropriate band and contribution percentage

Maidstone Borough Council will notify employees of their individual contribution rates in their payslips or by letter at least annually.

#### **Regulation 16 (2)e and 16 (4)d – Shared Cost Additional Pension Contributions (SCAPC)**

It is not Maidstone Borough Council's general policy to operate a SCAPC where a scheme member wishes to purchase extra annual pension (up to the limit defined in the regulations).

Where a scheme member has a period of child related leave or authorised unpaid leave and elects, within 30 days of return to work, to pay a SCAPC to cover the amount of pension 'lost' during the period of absence, in these circumstances Maidstone Borough Council is required to contribute 2/3rds of the cost. If an election is made after the 30 day time limit the full costs will be met by the scheme member.

Employees who have the option to pay contributions in respect of a period of unpaid absence must elect to do so within 30 days of the date of the notice issued to them by the Human Resources Section stating the amount of contributions to be paid. This time limit may be extended by the Head of Human Resources if the employee can demonstrate exceptional circumstances so as to justify an extension of time.

#### **TP Regulations 1(1)(c) of Schedule 2 – whether to allow the rule of 85 to be 'switched on' for members age 55-59.**

It is not Maidstone Borough Council's general policy to make use of the discretion to 'switch back on' the 85 year rule protections unless there are clear financial or operational advantages to the council. Each case will be considered on its merits by Head of Human Resources, the Head of Finance and the relevant Director.

#### **Regulation 17 (1) – Shared Cost Additional Voluntary Contributions (SCAVC)**

It is not the current policy of the Borough Council to operate a shared cost Additional Voluntary Contribution Scheme for employees. However, this policy will be reviewed from time to time by the Head of Human Resources in conjunction with the Chief Finance Officer, subject to Member's approval.

#### **Regulation 21 (5) – In determining Assumed Pensionable Pay whether a lump sum payment made in the previous 12 months is a 'regular lump sum'.**

Maidstone Borough Council will maintain a list which details what Maidstone Borough Council considers being a regular lump sum payment made to our employees to be used in the calculation of the Assumed Pensionable Pay

#### **Regulation 22 (7)(b) & 22 (8)(b) - Aggregation of Benefits**



Employees who have previous LGPS pension benefits in England and Wales will automatically have these aggregated with their new LGPS employment unless they elect within 12 months of commencing membership of the LGPS in the new employment to retain separate benefits. Maidstone Borough Council has the discretion to extend this period beyond 12 months and each case will be considered on its own merits by the Head of Human Resources, the Head of Finance and the relevant Director.

### **Regulation 30(6) – Flexible Retirement**

It is Maidstone Borough Council's policy to only provide consent for flexible retirement and the immediate payment of benefits where there are clear financial or operational benefits to the council. Any such consent requires the agreement of the Director of Human Resources and the relevant Director and each case would be considered on its merits.

If consent has been given under Regulation 30 (6) it is not Maidstone Borough Council's general policy to waive any actuarial reduction unless there are exceptional circumstances.

### **Regulation 30(8) Waiving of Actuarial Reductions**

It is not the policy of the Borough Council to give consent to the immediate payment of benefits to employees under this regulation unless there is a demonstrable benefit to the organisation which would take full account of any extra costs to be borne by the Authority. In circumstances where a request is made for an early payment of a deferred benefit this is unlikely to be granted except in the most extreme cases of hardship; circumstances must be exceptional and would not reasonably be expected to prevail i.e. the occurrence of a disaster or accident etc. Financial hardship alone would not normally be deemed sufficient. Any such consent shall be agreed by the Head of Human Resources, Head of Finance and the relevant Director taking account of all the details involved in the case.

Where a scheme member has previously been awarded a preserved benefit, it is not generally the policy of Maidstone Borough Council to give consent under this regulation to the early payment of benefits, however each request will be considered and full account taken of any costs to be borne by the authority. Any consent shall be agreed by the Head of Human Resources, Head of Finance and the relevant Director taking account of all the details involved in the case. It is not the council's general policy to waive any actuarial reduction in these circumstances.

### **Regulation 31 – Award of Additional Pension**

Maidstone Borough Council has the discretion to award additional pension (up to the additional pension limit defined in the regulations) to an active member or within 6 months of leaving the scheme to a scheme member who was dismissed on grounds of redundancy or business efficiency.

Maidstone Borough Council will only exercise this discretion in exceptional circumstances and where there is a proven total benefit to the organisation which includes any costs that might be borne by the authority. Any consent shall be agreed by the Head of Human Resources, Head of Finance and the relevant Director taking account of all the details involved in the case.

### **Regulation 100 (6) – Aggregation of Benefits**

If a scheme member wishes to transfer any pension benefits they have built up in other schemes to the Local Government Pension Scheme, it is the policy of Maidstone Borough Council that the election must be made within 12 months of the Pension Section being notified that the employee has become an active member of the Kent Scheme.

If the 12 month period has elapsed then the member may make a case for any exceptional circumstances to be considered by the Head of Human Resources, the Head of Finance and the relevant Director within Maidstone Borough Council and by the Pension Scheme Administrator, both organisations must agree to the late transfer.