

# **MAIDSTONE BOROUGH COUNCIL**

## **EMPLOYMENT AND DEVELOPMENT PANEL**

**21 JULY 2010**

### **REPORT OF THE HEAD OF HUMAN RESOURCES**

Report prepared by: Dena Smart, Head of Human Resources

#### **1. LOCAL GOVERNMENT SCHEME REGULATIONS 1997 AMENDMENT TO EMPLOYER DISCRETIONS**

##### **1.1 Issue for decision**

1.1.1 To agree the Maidstone Borough Council Policy relating to the Employer Discretions within the Local Government Pension Scheme (LGPS).

##### **1.2 Recommendation of Head of Human Resources**

1.2.1 It is recommended that the Employment Development Panel agree the amended policy on Employer Discretions as set out in draft at Appendix A.

##### **1.3 Background**

1.3.1 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. Members may recall that the last time this policy was amended was August 2008 at the time of the major change to the pension regulations.

1.3.2 Currently Maidstone Borough Council has a policy (Appendix B) for all the relevant regulations that offer discretion to the employer prior to the changes that came into force in April 2008. This information is given out to all new employees at the same time as they are given the Pension Handbook and it is therefore vital that this is up-dated to reflect the changes to the scheme. The practice in previous years within MBC and most other employers in Kent have been to mirror the same discretions as Kent County Council.

1.3.3 KCC have recently given advice that the wording of the policy at regulation 16(4)ii and 83(8) could be considered to fetter the council's decision making ability and may therefore be considered to be unlawful. As the employer discretions are to enable the council to exercise judgement then they have advised that there should be some opportunity for decisions to be made in exceptional circumstances, this wording already was in existence for regulations 30(2) and (5). The draft policy at Appendix A has therefore been adapted to incorporate this.

1.3.4 The discretionary policy agreed in 2008 reflected the transition arrangements in place for manual workers (Regulation 14(3)(b) in Appendix B) and as this time period has expired this regulation has been deleted.

1.3.5 Regulation 30(2) and (5) was not previously sufficiently clear to cover those members who had preserved benefits and this has now been added.

1.4 Alternative actions and why not recommended

The Employment and Development Panel must ensure that the Council has a policy on these employer discretions. The Panel could choose not to accept the change but this could mean that if an employee with exceptional circumstances challenged the refusal to allow them to combine other pensions with the MBC pension the Pension Ombudsman may rule that the Council had acted illegally by fettering its own decision making powers.

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

Financial	<input checked="" type="checkbox"/>
Staffing	<input checked="" type="checkbox"/>
Legal	<input checked="" type="checkbox"/>
Equality Impact Needs Assessment	<input type="checkbox"/>
Environmental/sustainable development	<input type="checkbox"/>
Community safety	<input type="checkbox"/>
Human Rights Act	<input type="checkbox"/>
Procurement	<input type="checkbox"/>
Asset Management	<input type="checkbox"/>

1.8 Financial

1.8.1 All pension scheme changes have some impact on the ultimate cost of the scheme but as these changes cover only exceptional cases this is not anticipated to have major cost implications in the future.

## 1.9 Staffing

1.9.1 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.

## 1.10 Legal

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

## 1.11 Relevant Documents

### 1.11.1 Appendices

Appendix A - amended draft policy on Employer Discretions  
Appendix B - current policy on Employer Discretions

### 1.11.2 Background Documents

None