
(1) POLICY ON EARLY RETIREMENT AND RELATED AREAS
(2) ASSOCIATED IMPLICATIONS ON PROTECTION PAYMENTS

**Responsible Cabinet Member – Councillor Stephen Harker,
Resource Management Portfolio**
Responsible Director – Paul Wildsmith, Director of Corporate Services

Purpose of Report

1. This report seeks approval for a revised policy on Early Retirement and Related Areas for Darlington Borough Council (DBC), which is attached at **Appendix 1**.
2. In addition, the report also recommends related revisions to the Council's Management of Change Policy in terms of a scheme for salary grade protection for employees who are downgraded as a result of restructuring.

Background

3. The Council's Early Retirement Policy needs revising and widening to take account of changes to the Local Government Pension Scheme (LGPS) and Discretionary Compensation Regulations (DCR) reflecting age legislation. The revised policy also needs to incorporate minor changes introduced since the policy was last published. A revised policy on 'Early Retirement and Related Areas' is attached at **Appendix 1**.
4. The changes to the LGPS include two new provisions for employees to request flexible early retirement from age 50 and to work beyond the normal retirement age. HR Advisory Circulars detailing the procedures to be followed are attached at **Appendices 2 and 3** respectively. These are already in use and have been developed in line with LGPS guidance and cleared via Human Resource Management, the Branch Secretary of UNISON and Durham Pensions. These will be incorporated into the management guidance on the revised policy once the policy has been agreed.
5. The Discretionary Compensation Regulations (DCR) allow local authorities to make compensatory payments to employees whose employment is terminated on redundancy or efficiency grounds. Background information on the revised DCR is attached at **Appendix 4**. Members are requested to agree how the Council will apply its discretions under the revisions so that this can be included in the revised policy.
6. The draft policy attached at **Appendix 1** has been developed to ensure that it is non-discriminatory in terms of the age legislation and that it is sufficiently flexible to allow the Council to facilitate future organisational change. This is especially important, given the current change agenda.
7. In considering the revised policy, it is worth noting that the number of early retirements/redundancies in the Council is generally low, especially in terms of those under the age of 50. It has always been the Council's aim to seek to avoid redundancies wherever

possible through effective vacancy management and redeployment.

8. Linked to the severance payments in the revised DCR, the report also recommends a scheme for salary grade protection for employees downgraded as a result of restructuring. Subject to agreement, this will be incorporated into the Council's Management of Change policy.

Right to Request Flexible Retirement from Age 50

9. The LGPS introduced this provision from 6 April 2006, with the aim of helping employees ease into retirement. Prior to this, employees had to retire before they could draw any pension benefits. However, providing they have the Council's consent, eligible employees may now reduce their hours or move to a lower graded post from age 50 and draw the pension benefits they have accrued. They may also draw their wages/salary from their job on the reduced hours or grade and continue paying into the LGPS to build up further benefits in the Scheme if they so wish.
10. It is important to note that employees need to have the Council's permission to access flexible early retirement. The Council will consider each request on its merits and will only agree requests if it is in the Council's economic and/or operational interest to do so.
11. Further information on this and the relevant procedure is given at **Appendix 2**.

Right to Request to Work Beyond the Normal Retirement Age

12. The age regulations introduced the above right from October 2006. The normal retirement age for Darlington Borough Council employees is currently age 65 (75 for school crossing patrol staff). If an employee makes such a request, the Council has a duty to consider it, but is under no obligation to agree.
13. An employee may only make one request in relation to each intended retirement date (i.e. if the request is turned down, the retirement takes place). However, if the request is successful and a new retirement date in, say, a year's time is agreed, the employee may request to work beyond the new retirement date when they are given notice.
14. Further information on this and the relevant procedure is given at **Appendix 3**.

Discretionary Compensation Regulations (DCR) 2006

15. The discretions previously available to local authorities to make compensatory payments to employees whose employment is terminated on redundancy or efficiency grounds were amended under the revised 'Discretionary Compensation Regulations' (DCR) 2006. Background information on the revised DCR is attached at **Appendix 4**. The Council must decide how it will operate under the revisions and include this information in the revised policy.
16. The regulations were largely amended as a result of age discrimination legislation. As such, the discretion to award 'added years' for the over 50s has been removed, as this practice is viewed as discriminatory.
17. The revised regulations allow Local Authorities to make discretionary payments where employment is terminated early on redundancy or efficiency of the service up to a maximum of two years' pay (104 weeks). Previously, it was possible to allow such

payments up to 66 weeks' pay as an alternative to awarding added years. The regulations also allow local authorities to retain the discretionary power to use an employee's actual week's pay in calculating redundancy payments, as opposed to the statutory ceiling (currently £310 per week).

18. Although the discretion to award added years for the over 50s has been removed, there is still discretion to increase an employee's length of membership by using regulation 52 of the Local Government Pension Scheme (LGPS). This can be offered to employees of any age, irrespective of leaving reason (other than ill health), providing they are active members of the Scheme. The total amount of augmented membership cannot exceed 10 years, or the period by which the employee's total LGPS membership falls short of the total membership they would have if they continued in the LGPS until age 65. It is worth noting that there is discretion to allow employees the option of using any enhanced compensatory payment awarded under the revised DCR (outlined in paragraph 17 above but excluding any statutory payment in redundancy cases) to purchase additional membership of the LGPS under regulation 52 if they so wish.
19. In Darlington prior to the recent changes to the DCR, it has been custom and practice in redundancy cases to award three added years to qualifying employees (those over 50 with qualifying pensionable service). The discretion to make a payment of up to 66 weeks' pay as an alternative to awarding added years has not been used since the late 1990s, when it was adopted to facilitate the changes resulting from the Local Government Review (LGR). Efficiency of the service terminations have been dealt with on a case-by-case basis.

Costing Information and Issues for Consideration

20. In considering how to apply the new discretions, most local authorities in the area have basically opted for the following: -
 - (a) using an employee's actual week's pay in calculating redundancy payments
 - (b) applying the discretion for efficiency of the service terminations on a case-by-case basis up to a maximum of 104 weeks' pay
 - (c) not to routinely apply the discretion to augment pensionable service
 - (d) applying the discretion for redundancy payments using the statutory redundancy matrix with a multiplier of up to 2.2 to enhance redundancy entitlement. For most Councils in the area, this brings redundancy payments up to a maximum of 60 or 66 weeks' actual pay, depending on the multiplier used.
21. Applying the discretions (a) (b) above are not an issue for Darlington and will not result in increased costs.
22. In terms of the discretion at (c), the Council has previously reserved the right to grant augmented membership to pensionable employees aged 50 or over only as an alternative to awarding added years. As Council practice has been to award added years for employees in this category, this discretion has effectively not been used to date. However, it is worth noting the position outlined in paragraph 18 i.e. that there is the discretion to allow employees the option of using any enhanced compensatory payment awarded to purchase additional membership of the LGPS under regulation 52 if they so wish.

23. Applying the discretion at (d) to enhance redundancy payments beyond the statutory 30-week maximum would have cost implications, depending upon the level of enhancement agreed.
24. Previously in Darlington, severance costs for employees under 50 were restricted to the statutory entitlement (but based on the actual week's pay). Costs were incurred by giving added years for the over 50s, which are broadly comparable with a 2.2 enhanced multiplier on redundancy.
25. As a result of recent age discrimination legislation, any enhancement agreed has to be applied consistently across the organisation i.e. to employees under and over the age of 50. It should be noted that, although many local authorities within the region have opted to use their discretion to enhance redundancy payments under the DCR, this may well have not been an increased cost for them as many were already using their discretion under the previous DCR to award up to 66 weeks' pay as an alternative to awarding added years.
26. It should be noted that release on redundancy for employees under the age of 50 has historically been low. Last year (06/07), five employees under the age of 50 received redundancy payments. However given the current change agenda, this low level of redundancies may increase in the future, although it is difficult to predict the age composition of employees likely to be affected.
27. The following shows the costs/ savings on variable redundancy options based on last year's early retirement and redundancy levels.

2006/7 Actual Redundancy/ Added Years costs	£140k
Costs using calculator of 2.2	£207k (additional cost of £67k – 48%)
Costs using calculator of 2.0	£188k (additional cost of £48k – 34%)
Costs using calculator of 1.5	£140k (cost neutral)
Costs using statutory table and without added years	£94k (saving £46k -33%)

28. Corporate Management Team (CMT), members of the Joint Consultative Committee (JCC) and Cabinet are of the view that the Council should apply the statutory redundancy matrix with a multiplier of 2.2 in the case of redundancy terminations, bringing the maximum payable on redundancy to 66 weeks' actual pay.
29. The advantages of applying the 2.2 multiplier are that this would make Darlington comparable with many other local authorities in the region and could help to implement change, particularly in the current climate of the Admin. Review and the Darlington & Stockton (D&S) Partnership.
30. In respect of the Partnership, any differential severance payment could also prove particularly problematic in employee relations terms. A reasonable exit package is also part of the overall remuneration and reward and would complement the new terms and conditions implemented under Single Status.
31. The disadvantage is obviously the additional costs in terms of redundancies for employees under the age of 50. This could be significant if the need for larger scale redundancy programmes arise in the future, as it will take longer to realise cost savings – particularly when linked to protection arrangements as discussed at paragraphs 39 to 42. However, current practice in seeking to avoid redundancies wherever possible through effective vacancy management and redeployment would be maintained to mitigate any potential

increase in costs.

32. CMT, JCC and Cabinet were also of the view that the Council should allow employees the option of using any compensatory payment awarded (over and above the statutory redundancy payment in redundancy cases) to purchase additional membership of the LGPS under regulation 52 if they feel this is more beneficial to their individual circumstances.
33. The exception in the age regulations to give an enhanced payment based on age and length of service criteria only applies in redundancy cases. However, it is important that the Council retains the flexibility to award an enhanced payment to employees leaving on efficiency grounds, as there may be cases when the Council needs to use this to facilitate organisational change.
34. As such, it is proposed that the Council maintain a flexible approach and pay up to a maximum 104 weeks' salary, based on an actual week's pay, according to the merits of each case. Any decision would naturally need to be authorised by the Director of the Department concerned, in consultation with the Head of Human Resource Management and one other CMT member, who must ensure that any decisions taken are free from age influence or any other discriminatory factors.
35. It is also proposed that the Council allow employees the option of using any compensatory payment awarded in efficiency cases to purchase additional membership of the LGPS under regulation 52 if they feel this is more beneficial to their individual circumstances.

Schools

36. It should be noted that any discretions applied as a result of the DCR applicable under the LGPS should be applied consistently for all non-teaching staff within Community Schools, for equality purposes.
37. Increased costs would fall either to the Council or individual schools, depending upon who picks up the redundancy bill i.e. the Council or the school. Consultation is scheduled with schools on the issue of enhanced payments under the DCR, together with a policy on the funding of redundancy costs.
38. There are also new discretions available under the Teachers Pension Scheme (TPS). These will require consideration following further clarity on their interpretation, which is currently being sought by the Local Government Employers to enable the adoption of an equitable severance package for all Council employees as far as is possible within relevant terms and conditions.

Protection Payments

39. When Job Evaluation was implemented in 2006 as part of the Council's Single Status Agreement, a three-year salary protection scheme was approved for employees whose overall earnings package decreased as a result of the changes. Prior to Single Status, the Council had no salary protection arrangements in place.
40. The current Job Evaluation salary protection scheme expires at the end of June 2009 and after that date the Council will have no protection scheme in place. As part of the Single Status Phase 2 negotiations, the NJC trade unions have requested a scheme of salary protection for employees whose grade is reduced as a result of restructuring and following discussions the following 3-year protection scheme has been jointly proposed. Protection

applies to salary grade only at the appropriate incremental point. It does not apply to an employees overall earnings package: -

- (a) 1 year at full salary protection (excluding any salary award due from date of start of protection);
 - (b) 1 year at 50% of difference between old and new salary (excluding any salary award due from date of start of protection);
 - (c) 1 year at 25% of difference between old and new salary (excluding any salary award due from date of start of protection).
41. It is proposed that subject to approval the scheme would become operative from 1st December 2007 and until the expiry of the Job Evaluation protection scheme on 30th June 2009, interim arrangements would apply whereby any employee detrimented by restructuring would receive full protection of their salary grade point to 30th June 2009 and thereafter balance of 3 year period remaining at appropriate rate on the non Job Evaluation protection rate. Employees in protection will also be offered access to the Council's Redeployment Scheme as is currently the case with Job Evaluation protection.
42. Whilst introducing these protection arrangements will mean that savings as a result of restructuring and efficiency exercises may take longer to realise, the security that protection will offer is beneficial in employee relations terms and will greatly assist in the implementation of change and will also bring Darlington into line with similar arrangements in other local authorities. The Council's Management of Change policy would need amending to reflect the revised arrangements.

Outcome of Consultation

43. Members of CMT, JCC and Cabinet have agreed the relevant recommendations contained in this report. Subject to Council agreement, the policy can take immediate effect from 29th November 2007.
44. Two employees are leaving the Council on redundancy grounds prior to 29th November. On leaving, they will be paid their statutory entitlement as an interim measure and can then be awarded any additional compensatory payment agreed by the Council on a retrospective basis.

Legal Implications

45. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues that the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Section 17 of the Crime and Disorder Act 1998

46. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

Council Policy Framework

47. This report does not seek to amend the Council's policy framework but the issues contained within this report are required to be considered by Council.

Conclusion

48. Members are asked to agree the policy on Early Retirement and Related Areas attached at **Appendix 1**, which incorporates changes to the LGPS and DCR following age legislation and other more general changes since the Early Retirement Policy was last published. In addition, Members are asked to agree the related revisions to the Council's Management of Change Policy in terms of a scheme for salary grade protection for employees who are downgraded as a result of restructuring.

Recommendation

49. Council are requested to: -

- (a) approve the draft revised Early Retirement policy at **Appendix 1**;
- (b) note the HR Advisory Circulars on the right to request flexible retirement from age 50 and to work beyond the normal retirement age at **Appendices 2 and 3** respectively;
- (c) agree that the Council continue to apply the discretion to use an employee's actual week's pay in calculating redundancy and efficiency payments, in line with current practice;
- (d) agree to apply the discretion for efficiency of the service terminations on a case-by-case basis up to a maximum of 104 weeks' pay;
- (e) agree to apply the discretion for enhanced redundancy payments using the statutory redundancy matrix with a multiplier of 2.2;
- (f) agree that any enhanced payment awarded for either redundancy or efficiency of the service terminations (over and above the statutory payment in redundancy cases) can be used to purchase additional membership of the LGPS under regulation 52, if employees feel this is more beneficial to their individual circumstances;
- (g) agree further consultation with schools on application of the revised DCR for all non-teaching staff and that further assessment be made of discretions within the Teachers Pension Scheme for application to teaching staff;
- (h) agree implementation of a 3-year salary grade protection scheme for employees who are downgraded as a result of restructuring comprising 1 year at full salary protection, 1 year at 50% of the difference between the old and new salary and 1 year at 25% of the difference between the old and new salary.

Reasons

50. The recommendations are supported by the following reasons: -

- (a) the Council's Early Retirement Policy needs revising and widening to take account of changes to the LGPS and DCR following age legislation. The revised policy also

needs to incorporate minor changes introduced since the policy was last published;

- (b) the draft policy attached at **Appendix 1** has been developed to ensure that it is non-discriminatory in terms of age legislation and that it is sufficiently flexible to allow the Council to facilitate future organisational change;
- (c) a protection scheme for employees whose grade is reduced as a result of restructuring will also help the Council to manage future organisational change.

Paul Wildsmith
Director of Corporate Services

Background Papers

- (i) Local Government Employers (LGE) Advisory Bulletin – Employment Relations no. 515 (June 2006).
- (ii) Information from the LGE on the new Compensation Regulations dated 13th November 2006.
- (iii) Information from NEREO on the application of the DCR by Authorities in the North East dated 18th May 2007.

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DARLINGTON BOROUGH COUNCIL

POLICY ON EARLY RETIREMENT AND RELATED AREAS

1.0 INTRODUCTION

1.1 This policy has been developed to help Darlington Borough Council manage early retirement and related areas effectively and to ensure fair and consistent treatment for all Council employees by:

- (a) ensuring that there is a policy together with procedures in place to cover all aspects of early retirement (and related areas), whether instigated by the Council or the employee, which have been agreed between the Council and recognised trade unions;
- (b) ensuring that this policy is communicated to all Darlington Borough Council employees;
- (c) ensuring that any applications for voluntary early retirement (VER), flexible early retirement from age 50 and requests to work beyond the normal retirement age are assessed in line with this policy and the related procedures.

1.2 Each local authority is required to produce and keep under review its policy relating to early retirement payments in a number of specified areas. This policy and the related management guidance therefore outline Darlington Borough Council's practice in relation to the discretions under the **Local Government Pension Scheme Regulations 1997 (as amended)** and the **Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (or 'DCR')**.

1.3 This policy should be read in conjunction with the Management Guidance on Early Retirement and Related Areas, which provides further details on the practical application of this policy.

2.0 POLICY STATEMENT

2.1 The normal retirement age for Darlington Borough Council employees is 65. However, there may be circumstances where the Council needs to action an early retirement situation, or is willing to consider applications for voluntary early retirement, flexible early retirement from age 50 or even requests to work beyond the normal retirement date from employees.

2.2 The Council is firmly committed to managing early retirement and these related areas effectively and to operating procedures that give fair and consistent treatment to all its employees. The Council will also make every reasonable effort to retain the skills and experience of employees via relevant policies, including redeployment, prior to considering early retirement.

2.3 In considering applications for voluntary early retirement, flexible early retirement from age 50 and requests to work beyond the normal retirement date, the Council will act in a sensitive and positive manner, taking equal account of the needs of the Council and the employee(s) concerned. The Council will also provide help and support to any employee(s) who leave(s) the Council on early retirement.

3.0 APPLICATION OF POLICY

3.1 This policy applies to all Darlington Borough Council employees and is recommended for adoption in relation to non-teaching staff in schools who are appointed directly by school governing bodies.

4.0 AUDIT COMMISSION REQUIREMENTS

4.1 The Audit Commission has expressed concern about the increasing number of early retirements in local government and their related impact on the Local Government Pension Scheme (LGPS).

4.2 As such, local authorities are required to exercise control in approving early retirements to ensure that the LGPS remains viable and to avoid absorbing funds that could otherwise be spent on providing public services.

4.3 The Council is required to report on the percentage of employees retiring early (excluding ill-health retirements) as a percentage of the total work force via BVPI14 to ensure that this area is monitored effectively.

5.0 EARLY RETIREMENT - GROUNDS AND RELEVANT PAYMENTS

5.1 All costs for retirement prior to the normal retirement age (and flexible early retirement from age 50) have a cost impact on the Pension Fund. As such, all recharges will fall on employing Departments.

Early Retirement instigated by the Council

5.2 Early retirement can be instigated by the Council before the normal retirement age on the grounds of ill health, redundancy, or efficiency.

Ill-Health

5.3 If the Council is to terminate employment because the employee is unable to continue in their job or any suitable alternative employment due to illness, the case will be referred to a suitably qualified independent Doctor to determine whether the employee qualifies for ill health retirement benefits from the LGPS. This naturally only applies if the employee concerned is a member of the LGPS with at least three months' service (or with transferred-in service from another pension scheme.) To qualify for such benefits, the Doctor must certify that the employee is permanently unable (i.e. at least up to age 65) to carry out their job or any comparable job effectively because of ill health or infirmity of mind or body.

5.4 Further information regarding the application of ill health retirement is detailed in the Council's Sickness Absence Management Policy.

Redundancy

5.5 If an employee is made **compulsorily redundant** after they have reached the age of 50 (this is to be increased to age 55 by 2010), the employee is entitled to receive their pension and lump sum immediately, without any reductions being applied for early payment, providing they have three months' or more membership of the LGPS, or have transferred rights from another pension scheme. The employee will qualify for a redundancy payment if they have two years'

continuous service (please see sections 6.2 and 6.6).

5.6 An employee can make an application for **voluntary redundancy** in circumstances where a redundancy situation has been identified and can be justified by the relevant Departmental Director in consultation with the Head of Human Resource Management and one other CMT member, or where redundancy criteria can be satisfied. In such cases, the conditions for receipt of the pension, lump sum and redundancy payment will be as in paragraph 5.5 above.

Efficiency of the Service

5.7 An employee can be dismissed or retire early in the interests of the efficiency of the service.

5.8 There is no statutory definition of ‘in the interests of the efficiency of the service’ and it is up to each local authority to certify in each case that the employee has retired in the interests of the efficient exercise of the authority’s functions.

5.9 These arrangements aim to facilitate organisational change and help with situations that may arise from new and expanding duties being placed upon an employee or from a decline in the employee’s ability to perform the duties of the post due to, for example, domestic circumstances, or health reasons which are not sufficient to justify ill-health retirement.

5.10 Retirement on efficiency grounds can only be considered where there are demonstrable efficiency grounds and alternative measures have proved to be inappropriate or ineffective (e.g. Redeployment or Capability procedures). Specific consideration must especially be given in terms of the requirement to make reasonable adjustments under the Disability Discrimination Act 1995.

5.11 If the Council instigates termination of employment for efficiency reasons after the employee has reached the age of 50 (55 by 2010), the employee is entitled to receive their pension and lump sum immediately, without any reductions being applied for early payment, providing they have three months’ or more membership of the LGPS, or have transferred rights from another pension scheme.

Instigated by the Employee (Voluntary Early Retirement - VER)

5.12 Once an employee reaches the age of 60, the employee does not need Darlington Borough Council’s agreement before they can take early retirement. However, their pension will be reduced if they do not meet the ‘85-year rule’ (i.e. if the proposed retirement age added to the employee’s total amount of membership of the LGPS does not add up to at least 85).

5.13 The ‘85-year rule’ is to be phased out from 1 October 2006. However, various protection arrangements have been agreed, which are detailed in the management guidance to this policy.

5.14 An employee can request early retirement after having reached the age of 50 (55 by 2010) provided they meet the appropriate membership criteria of the Local Government Pension Scheme. However, any retirement before age 60 has to be approved by Darlington Borough Council. **The Council will only approve applications in cases where it is clearly in the Council’s interest to do so.** In cases where the employee does not meet ‘the 85-year rule’, applications may be considered on the basis of an actuarially reduced pension.

6.0 ADDITIONAL DISCRETIONARY PAYMENTS

6.1 Local government employers may make discretionary compensation payments to eligible employees whose employment has been terminated early on redundancy or efficiency grounds.

One-off Lump Sum Payment of up to, but not exceeding, two years' pay (104 weeks) (inclusive of any redundancy payment made).

6.2 In **redundancy** cases, the Council will make an enhanced redundancy payment to eligible employees with two years' continuous service. This payment will be calculated in line with the statutory table for calculating redundancy payments, using a multiplier of 2.2. As such, the maximum award will be 66 weeks' pay, inclusive of the statutory redundancy payment.

6.3 In **efficiency** cases, the Council will exercise its discretion to make an enhanced payment of up to a maximum of 104 weeks' salary. Each case will be considered individually and a decision taken depending on the merits of each case. This assessment will be made by the Departmental Director, in consultation with the Head of Human Resource Management and one other CMT member, who must ensure that any decisions taken are free from age influence or any other discriminatory factors.

Augmented Membership under the LGPS

6.4 The Council has the discretion to award additional membership up to a maximum of 10 years through the augmentation provision in regulation 52 of the LGPS Regulations 1997 to any current employee who is a member of the LGPS in both **efficiency** and **redundancy** cases.

6.5 Darlington Borough Council will give employees the option of receiving an enhanced payment as in sections 6.2 and 6.3, *or* converting the cash equivalent sum (minus the statutory redundancy payment in redundancy cases) into a period of membership in the LGPS.

6.6 In order to be able to access this option, employees must be active members of the LGPS at the time the payment is made. As such, the decision whether or not to use the augmentation provisions must be made before the employment is terminated.

6.7 Pension benefits for employees over 50 (55 by 2010) will be payable immediately. If the employee is under 50 (55 from 2010), the additional service will be added to their deferred benefits under the LGPS.

Definition of a Week's Pay

6.8 The Council will apply its discretionary power to calculate payments in all the above situations using the employee's actual weekly pay (as opposed to the statutory weekly pay ceiling).

Definition of Service

6.9 The Council will include previous continuous service with an organisation covered by the Redundancy Payments (Local Government Modification) Orders (which covers local authorities and related bodies) when calculating the above payments.

7.0 APPLICATION PROCEDURE FOR VOLUNTARY EARLY RETIREMENT (INCLUDING VOLUNTARY REDUNDANCY)

7.1 Any employee who wishes to apply for voluntary early retirement or voluntary redundancy must apply in accordance with the Council's procedures, which are detailed in the Management Guidance on Early Retirement and Related Areas.

7.2 Applications will be considered by the Director of the Department concerned, in consultation with the Head of Human Resource Management and one other CMT member.

7.3 The employee will be advised of the decision in writing within one month of receipt of the application, or issued with a holding reply in extenuating circumstances.

8.0 RE-EMPLOYMENT FOLLOWING EARLY RETIREMENT

8.1 Although the majority of employees who have taken early retirement will be unlikely to apply for re-employment with the Council, there may be instances where the Council is in a position where it wishes to appoint a former employee, especially in an area where there are skills shortages. Re-employment following early retirement must always be on the basis of fair and open competition.

8.2 From 1 December 2004, if a former employee becomes re-employed in local government, or takes any employment where they have access to the LGPS, any retirement pension payable will not be abated, except in the circumstances set out below.

8.3 If the employee retired under the provisions of this policy, or was made redundant and awarded compensatory added years as part of the retirement package (under the provisions of the DCR 2000), the compensatory added years element of the retirement pension will still be subject to abatement. This is a requirement of the regulations governing compensation awards.

8.4 Abatement means that the compensatory added years elements of any pension will be reduced or suspended if the re-employment earnings together with the annual pension exceeds former earnings. If this happens, the compensatory added years element of the annual pension will be reduced on a £1 for £1 basis. In some circumstances, this reduction can be permanent.

8.5 The national pension regulations still require any former employee to notify the County Treasurer if they become re-employed by any employer where there is access to the LGPS.

9.0 FLEXIBLE RETIREMENT FROM AGE 50

9.1 From 6 April 2006 onwards, the LGPS allows employees aged 50 or over with at least three months' total membership (or who have brought a transfer value into the LGPS) to apply for flexible retirement to help ease them into retirement.

9.2 Eligible employees may request to reduce their hours of work or move to a position on a lower grade and draw the pension benefits they have already built up, whilst still drawing their wages/salary from their job on the reduced hours or grade. They can also continue paying into the LGPS to build up further benefits in the Scheme.

9.3 The Council will consider each request on its merits and will only agree requests if it is in the Council's economic and / or operational interest to do so.

9.4 Further details on flexible early retirement from age 50 and how to apply are detailed in the Management Guidance to this policy and in a separate HR Advisory Circular available on the Intranet, or from Departmental Human Resources teams.

10.0 REQUEST TO WORK BEYOND NORMAL RETIREMENT DATE

10.1 The Employment Equality (Age) Regulations 2006 introduced the right for employees to request to work beyond their normal retirement age from 1 October 2006.

10.2 If an employee makes such a request, the Council has a duty to consider it but is under no obligation to agree such requests.

10.3 An employee may only make one request in relation to each intended retirement date. However, if the request is successful and a new retirement date is agreed, the employee may request to work beyond the new retirement date when they are given notice of retirement from the new date.

10.4 Under the changes to the LGPS from April 2006, employees can remain in the scheme up to two days before their 75th birthday.

10.5 Further details on the right to request to work beyond the normal retirement dates is detailed in the management guidance to this policy and in a separate HR Advisory Circular available on the Intranet, or from Departmental Human Resources teams.

11.0 RIGHT OF APPEAL

11.1 In cases where the Council terminates employment on the grounds of ill health or compulsory redundancy and notwithstanding the fact that pensions are paid early, employees have a right of appeal to the Human Resources Panel. The appeal should be made in writing to the Head of Human Resource Management within five calendar days of the receipt of the dismissal notice.

11.2 There is also a right of appeal against any decision regarding an employee's pension benefits, taken under Pension Scheme Regulations. This is detailed in the leaflet 'The Local Government Pension Scheme – Internal Dispute Resolution Procedure'. Copies are available from the Payroll Section at the Town Hall.

11.3 There is a right of appeal against decisions taken in relation to applications for early retirement (including voluntary redundancy) and flexible early retirement from age 50 to the Human Resources Panel under Stage 3 of the Grievance Procedure.

11.4 Employees have the right of appeal to a more senior manager following unsuccessful applications for the right to work beyond the normal retirement date.

12.0 RESPONSIBILITY

12.1 The Chief Executive and Directors have overall responsibility for the implementation of this policy.

13.0 EMPLOYEE ASSISTANCE

13.1 Employees may access help and advice from their line manager, trade union representative and their Departmental Human Resources Team.

14.0 MONITORING AND REVIEW

14.1 The implementation and effectiveness of this policy will be monitored and reviewed by the Corporate Management Team (CMT), Joint Consultative Committee (JCC) and Cabinet. In addition, The Council will report costs in relation to early retirement to members on an annual basis.

15.0 FURTHER GUIDANCE

15.1 For further information on this policy, please refer to the Management Guidance on this policy, or contact your Departmental Human Resource Team.

Maggie Swinden – 12 Nov 2007



HUMAN RESOURCES ADVISORY CIRCULAR NO. 2/2006
DATE: February 2007

FLEXIBLE RETIREMENT FROM AGE 50

1.0 Introduction

1.1 The Local Government Pension Scheme (LGPS) introduced the above provision from 6 April 2006, with the aim of helping employees to ease into retirement.

1.2 Prior to the introduction of this provision, employees had to retire before they could draw any pension benefits. However, *providing they have the Council's consent*, eligible employees may now reduce their hours or move to a lower graded post from age 50 and draw the pension benefits they have accrued. They may also draw their wages/salary from their job on the reduced hours or grade and continue paying into the LGPS to build up further benefits in the Scheme if they so wish.

1.3 It is important to note from the start that employees need to have the Council's permission to access flexible retirement, both in terms of agreeing to the reduction in hours or grade **and** in terms of the release of the accrued pension benefits. The Council will consider each request on its merits and will only agree requests if it is in the Council's economic and / or operational interest to do so.

2.0 Eligibility

2.1 In order to be eligible, employees need to be aged 50 or over (or be approaching age 50 and would meet the age requirement by the time they wish flexible retirement to start) and have at least three months' total membership of the LGPS (or have brought a transfer value into the LGPS).

2.2 In terms of Darlington Borough Council's (DBC's) application of this provision, employees will need to apply for a minimum 20% cut in hours, or a minimum reduction of one full grade, before flexible retirement will be considered. This is because the Council does not feel that anything less than this will meet the aim of this provision, which is to ease employees into retirement.

2.3 Also, in order for DBC to consider an application for flexible retirement, any employee under the age of 60 must be able to commit to remaining in employment with DBC for a minimum period of one year from the date they start the flexible retirement arrangement, or to age 60, if earlier.

3.0 Application Procedure

3.1 Employees should note that requests for flexible retirement might take a number of weeks/months to action (or longer if a problem arises). As such, they should ensure that they make their application well in advance of when they would like flexible retirement to start.

3.2 Eligible DBC employees can request to reduce their hours of work in their current job, or move to another job in the Council on a lower grade or on reduced hours and elect to draw the pension benefits they have already built up, whilst continuing to work the flexible arrangements proposed. To do this, they need to complete Part 1 of the attached application form and pass this to their line manager.

3.3 Making an application does not give employees an automatic right to flexible retirement but the Council will give any such requests serious consideration. In doing so, the Council will look at the following factors:

- impact of any additional costs on the Council
- impact on ability to meet customer demand
- ability to reorganise work amongst existing employees
- ability to recruit additional staff
- impact on quality
- impact on performance
- availability of work during the periods the employee proposes to work
- any relevant planned structural change

3.4 After receiving the application form, the line manager will liaise with the Departmental HR Team to arrange an estimate of the accrued pension benefits and any costs to the Council associated with the request.

3.5 The line manager will then aim to meet the employee to discuss the request within four weeks of receipt of the employee's request. The meeting will provide the line manager and employee with the opportunity to discuss the request in detail, including any financial and operational implications. It also provides an opportunity to consider alternative reductions in working hours, should there be problems in accommodating the initial request.

3.6 If the employee has requested flexible retirement via moving to a lower graded post in their current team or in a different team in the Council, or for reduced hours in a different post in the Council, the employee must still apply for an advertised post under the Council's Recruitment and Selection policy in fair and open competition with other applicants. As such, if the Council agrees the request for flexible retirement on this basis, we cannot give a timescale for implementation, as this will depend on the availability of suitable jobs and the recruitment and selection programme.

3.7 Following the meeting, the line manager must discuss the request with a member of the Departmental HR Team again before giving their views on Part 2 of the application form as to whether or not the request can be agreed from their perspective.

3.8 The line manager must then pass the form to the Departmental HR Team, who will ensure that a copy of the pension estimate and estimated costs to the Council are attached to the form, before passing this to the Departmental Director.

3.9 The Director should consider the application, bearing in mind that the Council will consider each request on its merits and will only agree requests if it is in the Council's economic and / or operational interests to do so.

3.10 The decision then needs to be endorsed by the Head of Human Resource Management and another member of the Corporate Management Team. They will return the form to the Departmental HR Team as soon as possible, as the Departmental HR Team will aim to give the employee the Council's decision in writing within two weeks of the meeting between the employee and line manager to discuss the request.

3.11 If the Council refuses the request, the Departmental HR Team must include in the letter the employee's right of appeal against the decision to the Human Resources Panel, in line with Stage 3 of the Council's Grievance Procedure. The employee cannot make a further request for flexible early retirement for 12 months.

3.12 If the request is agreed, the Departmental HR Team must liaise with Durham Pensions on the release of accrued pension benefits, write to the employee setting out the agreement and the date from which it is to take effect (although please note section 3.6), issue a revised Statement of Particulars, establish whether the employee wishes to continue paying into the LGPS to build up further benefits in the Scheme and liaise with Payroll on the new arrangements.

3.13 If a contract variation is agreed, it will be permanent and there will be no right to revert back to the former arrangements unless otherwise agreed.

4.0 Representation

4.1 The employee has the right to be accompanied by a representative for the first and any subsequent meetings on this issue. The representative may be a trade union representative, workplace colleague or friend of the employee's choice, who does not have a conflict of interest. The representative will be able to address the meeting and confer with the employee during the meeting but not answer questions on the employee's behalf.

5.0 Withdrawal of Application

5.1 If an employee wishes to withdraw an application for flexible retirement at any stage of the process, they must do so in writing to their line manager.

6.0 Financial Implications

The Council

6.1 Any costs for flexible retirement from age 50 will fall on employing Departments.

Employees

6.2 If employees receive payment of their pension benefits under flexible retirement, their benefits will not be subject to reduction or suspension for re-employment whilst they continue in their employment or any subsequent employment with Darlington Borough Council.

7.0 Further Information

7.1 Please note that employees may choose to apply for a job at a lower grade or on reduced hours at any time via the normal recruitment and selection process, without the Council's consent. However, if their application is successful, the new arrangements would be entirely voluntary and the flexible retirement provisions from age 50 would not apply (i.e. in terms of the release of the accrued pension benefits.)

7.2 If you have any further queries about flexible retirement from age 50, please contact a member of your Departmental Human Resources Team.

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HR MANAGERS

CABINET MEMBER WITH PORTFOLIO FOR RESOURCES

CHAIR & VICE CHAIR OF RESOURCES SCRUTINY COMMITTEE

APPLICATION FOR FLEXIBLE RETIREMENT FROM AGE 50

1. EMPLOYEE ACTION

(i) PERSONAL DETAILS

Name : _____ Employee Number: _____

Team: _____ Department: _____

Post Title: _____ Grade: _____

(ii) ELIGIBILITY

(Please tick as relevant)

Are you age 50 or over (or will shortly be aged 50 and wish to request flexible retirement from then), with at least 3 months' total Membership of the Local Government Pension Scheme?

Yes No

(if no, you may not be eligible to apply. Please contact your Departmental HR Team)

(iii) APPLICATION DETAILS

(Please tick a, b or c below as relevant)

I would like to apply to:

a) Reduce my working hours in my current post by at least 20%

Please give details in section (iv) below

b) Reduce my working hours by applying for another DBC post on less hours

Please state required number of hours (NB at least 20% reduction)

c) Reduce my grade by applying for another DBC post at a lower grade

Please state required grade (NB least 1 grade lower)

(iv) REDUCED WORKING HOURS

Please describe your current working pattern (days/hours/times worked)

Please describe the reduced working hours and pattern you would like to work (days/hours/times)

How do you think this reduction in hours will affect the Council and colleagues?

How do you think this impact on the Council and colleagues might be addressed?

From which date would you like this change to begin?

(v) **DECLARATION**

I understand that my Departmental HR Team will liaise with Pensions for an estimate of my accrued pension benefits and details of any costs to the Council in terms of this flexible retirement request.

Signed _____ **Date** _____

2. LINE MANAGEMENT ACTION

Line manager to liaise with Departmental HR Team to access costs of early release of pension benefits under flexible retirement. Line manager then to meet employee within 4 weeks of request to discuss application and complete the section below, following further discussion with the Departmental HR Team

I can confirm:

a) I would/would not support the request (please delete, as appropriate)

b) The request is/is not in the interest and efficiency of the organisation (please delete, as appropriate)

c) (If request is supported) (b) may be achieved by: (please expand on additional sheet if necessary)

Signature: _____ **Date:** _____

3. HR ACTION

Please attach copy of pension estimate

Date passed to Departmental Director _____

4. DIRECTOR'S ACTION

My decision regarding this application is as follows: (please continue on an additional sheet if necessary)

Signed _____ **Director** **Date** _____

Signed _____ **Head of HRM** **Date** _____

Signed _____ **CMT Member** **Date** _____

Please return this form to your Departmental HR Team

We will use the information an employee gives on this form and any supporting information they provide for the purposes of the form/service. Additionally, we will also use the information for the purposes of the Council, and any other lawful purpose, and/or to provide the employee with information regarding other services and benefits to which they may be entitled.



HUMAN RESOURCES ADVISORY CIRCULAR NO. 1/2007
DATE: FEBRUARY 2007

REQUEST TO WORK BEYOND NORMAL RETIREMENT DATE

1.0 Introduction

1.1 The Employment Equality (Age) Regulations 2006 came into force from 1 October 2006. The legislation introduced the right for employees to request to work beyond their normal retirement age (which is currently age 65 for Darlington Borough Council employees - with the exception of School Crossing Patrol staff, where it is age 75).

1.2 If an employee makes such a request, the Council has a duty to consider it but is under no obligation to agree such requests.

1.3 An employee may only make one request in relation to each intended retirement date (i.e. if the request is turned down, the retirement takes place). However, if the request is successful and a new retirement date in, say, a year's time is agreed, the employee may request to work beyond the new retirement date when they are given notice of retirement from the new date.

2.0 Transitional Arrangements

2.1 The full procedure defined in Section 3 of this circular will be introduced for retirements on or after 1 April 2007. However, Human Resource Management Division has had transitional arrangements in place to cover retirements from 1 October 2006 to 31 March 2007.

3.0 Procedure for Retirements on or after 1 April 2007

3.1 Anyone retiring on or after 1 April 2007 will be subject to the full retirement procedure described below.

3.2 The Departmental HR Team will notify employees in writing of their right to request to go on working beyond their retirement date at least 6 months (but no more than 12 months) before the retirement date.

3.3 The letter will set out how the Council will manage the retirement process. It will also remind employees of the Council's obligation to give consideration to any request to work after the normal retirement age. In order to avoid raising any expectations, it will explain that the Council is entitled to refuse the request and is not required to give a reason for any decision.

3.4 If the employee wishes to continue working, they must make a request to do so in writing to their line manager no less than **three months** before the intended retirement date. The letter must include whether the employee wishes to continue working indefinitely, for a stated period, or until a certain date.

3.5 The Council must then consider this request before the employee is retired.

3.6 The employee's line manager must meet the employee to discuss the request within a reasonable time period of receiving the request. The meeting provides the employee with an opportunity to put their case to the line manager.

3.7 As preparation, it is good practice for the line manager to reflect on the positive reasons why they should grant an extension, in particular:

- savings for the Council in recruitment and training costs
- retaining the valuable experience and knowledge of the employee

3.8 One of the potential outcomes of the meeting might be that, whilst the line manager cannot accept the employee's stated request, there may be a compromise solution. It is perfectly acceptable for the employer to propose alternative working patterns and retirement dates other than those proposed by the employee, if the manager is persuaded by the employee's case not to be retired.

Cases where a Meeting may not be required

3.9 In cases where the line manager can agree to the request immediately or it is not practicable to hold a meeting, **the line manager must discuss the situation with their Departmental HR Team before responding to the employee.**

3.10 Where the request can be agreed immediately, the employee's Statement of Particulars can be amended to reflect the new intended retirement date and if required, the new employment pattern.

3.11 Where it is not practicable to hold a meeting, the line manager may inform the employee of the decision in writing, as long as s/he has considered any representation made by the employee.

After the Meeting

3.12 The line manager must advise the employee of the decision as soon as is reasonably practicable (preferably within two weeks of the meeting), **after full discussion with the Departmental HR Team.** Any decision must be given in writing and dated.

3.13 If, after the meeting, the line manager decides to accept the employee's request, s/he should inform the employee, stating the new employment pattern and when the new intended

retirement date will be. The regulations recommend that any extended period agreed be fixed to at least six months, to enable the Council to comply with the duty to give the employee at least six months' notice of the new retirement date. The Departmental HR Team will then need to issue an amended Statement of Particulars.

3.14 Where the decision is to refuse the request, the line manager should confirm that the Council still wishes to retire the employee – either on the original intended retirement date or an alternative later date.

3.15 The line manager does not need to give a reason why the application has been rejected.

3.16 The employee's employment will continue until they have been informed of the line manager's decision following their request.

Appeals

3.17 The employee may appeal against the line manager's decision as soon as is reasonably practicable after receiving notification of the decision (normally within two weeks), by writing to the line manager to advise him/her of this and the reason(s) for the Appeal. The employee may appeal against the decision if the line manager has refused the request in its entirety, or accepted it, but decided to continue employing the employee for a shorter period of time than the employee requested.

3.18 If the employee does appeal, the appeal meeting should be held as soon as is reasonably practicable (preferably within two weeks of receipt of the employee's appeal letter.)

3.19 The meeting will be attended by the line manager who made the initial decision and the next manager in the reporting chain (or other suitable senior manager where this is not possible), in addition to the employee and his/her representative.

3.20 The appeal meeting is the final opportunity for the employee to put their case before the Council. At the end of the meeting, the senior manager may decide that, whilst they cannot accept the employee's stated request, there may be a compromise solution. Again, it is perfectly acceptable for the senior manager to propose alternative working patterns and retirement dates other than those proposed by the employee, if the senior manager is persuaded by the employee's case not to be retired.

3.21 The senior manager must write the employee setting out the decision, as in paragraphs 3.12 to 3.16.

3.22 The appeal meeting can be held after the retirement has taken effect, if necessary.

4.0 Representation

4.1 The employee has the right to be accompanied by a representative for the first and any subsequent meetings on this issue. The representative may be a trade union representative, workplace colleague or friend of the employee's choice, who does not have a conflict of interest. The representative will be able to address the meeting and confer with the employee during the meeting but not answer questions on the employee's behalf.

5.0 Further Information

5.1 If you have any further queries about requests to work beyond the normal retirement date, please contact a member of your Departmental Human Resources Team.

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Background to the Revised Discretionary Compensation Regulations (DCR)

1. Local Authorities have discretions to pay compensation to employees whose employment is terminated on redundancy or efficiency or grounds. These are referred to as the Discretionary Compensation Regulations, or 'DCR'.
2. The Council's policy to date has mainly been to give up to three added years' membership of the LGPS to employees aged 50 or over who leave on either redundancy or efficiency grounds. However, this discretion was removed from 1 April 2007, as it was deemed discriminatory under age legislation.
3. The revised DCR allow local authorities to award a one-off lump sum of up to, but not exceeding, two years' pay (104 weeks) in such cases, instead of added years, to employees of any age. This must include any statutory payment to which employees with over two years' continuous service are entitled in redundancy cases.
4. Neighbouring authorities have opted to calculate the number of weeks' salary to give in redundancy cases by using the statutory redundancy matrix (based on age and length of service), with a multiplier of between 2 and 2.2. This means that the maximum number of weeks' payment would be 60/66 weeks respectively.
5. The proposal for Darlington (outlined in the report) uses the statutory redundancy matrix with a multiplier of 2.2, making a maximum payment of up to 66 weeks' salary. As such, any enhanced redundancy payment would include the statutory element.
6. The exception in the age regulations to give an enhanced payment based on age and length of service criteria only applies in *redundancy* cases. Such payments for efficiency terminations are much more likely to be 'one-offs', where it is more appropriate to take individual circumstances into account, although any decision must be free from age influence. The proposal for compensatory payments on efficiency grounds (outlined in the report) aims to give the Council a flexible approach and pay up to a maximum 104 weeks' salary, depending on the merits of each case.
7. As well as the DCR, Local Authorities have also been able to use regulation 52 of the LGPS to increase an employee's length of membership in the scheme (referred to as 'augmentation') and this option remains.
8. This can be offered to employees of any age, irrespective of leaving reason (other than ill health), as long as the employees concerned are active members of the LGPS. However, the Council's policy has previously been to use augmentation *as an alternative to added years and only for employees aged 50 or over*.
9. The total amount of augmented membership cannot exceed 10 years (as from June 2007), or the period by which the employee's total LGPS membership falls short of the total membership they would have if they continued in the Scheme until age 65.
10. It is worth noting that the augmentation provisions would not necessarily be attractive to someone leaving employment who is under the age of 50. This is because payment of any benefits would be deferred until age 60 at the earliest.