

REPORT TO COUNCIL

REPORT OF: Chief Executive

REPORT NO.: CEX352

DATE: 7th September 2006

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| TITLE: | SKDC Pension Policy: The “Local Scheme” | |
| KEY DECISION OR POLICY FRAMEWORK PROPOSAL: | N/A | |
| COUNCIL AIMS/PORTFOLIO HOLDER NAME AND DESIGNATION: | Clr Bryant | |
| CORPORATE PRIORITY: | N/A | |
| CRIME AND DISORDER IMPLICATIONS: | None | |
| FREEDOM OF INFORMATION ACT IMPLICATIONS: | None | |
| INITIAL EQUALITY IMPACT ASSESSMENT | Carried out and appended to report? Not Applicable | Full impact assessment required? No |
| BACKGROUND PAPERS: | See appended documents | |

This is an urgent report which the Chairman has agreed to take as a late item. The reason for urgency is because of actions required as a result of a legal opinion received by the Council on the 29th August, which was after the despatch of the agenda.

1. Background

The national regulations on local government pensions enable Councils to exercise discretion on certain aspects of pension entitlement. These discretions are exercised through the development of a pension policy. The County Council, who administer the policy on our behalf, are made aware of this policy by a pro-forma being completed by each District and deposited with them.

Although there is ambiguity in the Council records, it would appear that the Council's current policy emanated from a report to the Staffing Sub-Committee on the 16th July 1996. It is assumed that the same report was subsequently approved by that committee and ultimately by full Council on the 28th October of the same year. A copy of the initial report and minutes are enclosed as Appendix A.

This policy was re-affirmed a year later when a report was taken to the Finance and Personnel Committee describing changes to the national scheme including the introduction of the "rule of 85" retirements (see Appendix B). At that time the words "associated with the interest of efficiency" were added to the scheme although this term was not defined.

The report approved in October 1996 established the Council's local (or "loyalty") scheme which is as follows:

Any employee with at least 10 years service with South Kesteven and with at least 20 years LGPS service overall, and aged over 50 years, should be allowed to retire with earned benefits having given six months notice (or less at the leave of the Council). Those leaving local government services earlier than age 50, but otherwise qualifying, should become entitled for equivalent treatment upon attaining 50 years.

In December 2005 the Council received a claim under the second part of this scheme i.e. from a person leaving the Council before the age of fifty. To my knowledge this is the first such claim to have been received under this provision. It is the result of the work taken to investigate this application that has led to the current situation.

2. Pensions – Wider Issues

This report comes at a time when there is another, entirely unrelated, issue affecting the Council's pension scheme. This is the impact of age discrimination legislation which comes into effect from the 1st October. As it appears (though this interpretation is subject to a judicial review scheduled for late September) both the Council's local scheme, and the national provisions regarding rule of 85 retirements, will not comply with this legislation. I am currently consulting staff and unions on a new pension policy which is scheduled to come before Council for approval on the 26th of October.

3. Factors causing concern in the adoption by the Council of the Local Scheme

In reviewing the Committee reports and minutes that led to the adoption of the local scheme some ten years ago, the following aspects caused me some concern:

1. The scheme describes itself as "radical" (para 16) and appears to have been explicitly designed to provide a blanket eligibility for employees dependent upon certain requirements being met. I had not come across such an approach before.
2. The report to the Staffing Sub-Committee in 1996 contained no financial information to support, or demonstrate, how the introduction of such a policy would be in the interests of the Council. Furthermore

some of the arguments and assumptions that underpinned this report seemed to me to be either unfounded or irrelevant.

3. The policy that was advocated and ultimately adopted, appears to me to run counter to the views of the Audit Commission who were seeking to challenge the perceived culture of early retirements in Local Government. In particular the report from the District Audit entitled "Planning and control of early retirements in South Kesteven" received by the Council in December 1998 (Appendix C) do not seem to have been fully reflected in the report to Committee (Appendix D).
4. It is surprising that the only member discussion on the content of such a key policy document as the pension scheme appears to have been in a Sub-Committee meeting. It is of even greater concern that the record within the Council minutes of the approval of this scheme is not clear or unequivocal and that the key term "efficiency of the service" was not defined.

I sought a confidential expert opinion on these matters from an experienced and financially qualified professional colleague who had a good understanding and experience of Local Government Pension schemes. Based on his confidential report, and in consultation with the Monitoring Officer, and Section 151 Officer, a Counsel's opinion was sought.

The Counsel's opinion was received on the week beginning the 28th August. He concluded that the scheme is fundamentally misconceived in law and therefore illegal. However, as he explained in the report, it does not follow that all payments made under this scheme are unlawful. There is clearly a lot of work in order to ascertain on a case by case basis the full implications of this opinion. This work is currently underway as a matter of the highest priority and will be reported to Council as soon as it is complete.

Early indications, from the work undertaken so far indicate that there are likely up to thirty persons who have benefited from the Council's local scheme and who were not already eligible under other criteria. Internal audit have been asked to validate the results before any further action is taken.

External audit have been kept informed of all these developments as they have occurred and have been given a copy of the Counsel's opinion. They have been invited to attend the Council meeting but indicated that they will not be able to do so. They have indicated they would wish to be kept informed of the Council's enquiries, are assessing the information provided to them and are considering what further action or enquiries they may need to take.

Having carefully considered this opinion, I am not recommending to Council that a second opinion is obtained, however in consultation with the monitoring officer and Sections 151 officer, further clarification is being sought from Counsel on the following implications of this opinion:

1. Whether there are any implications for the Council's policy on rule of 85 retirements.
2. What actions could, or should, be considered to be taken by the Council in regard to the recipients of pensions paid under this scheme, or any of the parties involved in its preparation or approval.

On receipt of the opinion I had no choice but to suspend the Council's local scheme until the outcome of this meeting. As explained earlier, the local scheme would have to be terminated on the 1st of October anyway since it will not be compliant with the age discrimination legalisation which comes into effect on that date. This coupled with the need for employees to give six months notice of any application, ameliorates some of the issues resulting from this action.

When the case-by-case reviews have been completed it is my intention to write to recipients of a pension under the local scheme, explaining the situation and offering them a meeting

Separately from this review I have also launched a full investigation into how the current scheme came to be established; what professional advice was provided at the time; how the scheme has been operated and whether members have been kept informed. I am recommending that the Council appoints a panel comprising the Leader, Portfolio-holder for Resources and Chairman of the Resources DSP to oversee this investigation.

3. Comments of Monitoring Officer

I endorse the action of the Chief Executive to suspend the operation of any current and future claims for early release of pension under the local scheme referred to. This does not prevent the Council from considering and, if appropriate, consenting to such requests wholly in accordance with the current pension regulations. It is the automatic right to early release of pension which cannot be allowed to continue. Counsel's advice is clear and unequivocal. I can see no benefit in obtaining a second opinion.

Without a full appraisal of the consequences, the Council cannot be clear of the scale of the issue. That must be clearly established before any further action can be considered. The alleged illegality of the scheme does not, in itself, cause all payments made under the scheme unlawful. I do not consider, at this stage, it would be appropriate to issue a Monitoring Officer report in accordance with s. 5 of the Local Government and Housing Act 1998. I am satisfied the local scheme has been properly suspended and that no further unlawful acts can occur as a result of that suspension. However, I fully appreciate there may be a need for such a report and reserve the right to make such a report should the need arise.

4. Comments of Corporate Head of Finance and Resources (Section 151 officer)

I have been fully consulted by the Chief Executive on this matter and have taken the following actions under my duties as required by legislation and the Council's constitution:

- a. supported the Chief Executive's action in taking Counsel's opinion on the lawfulness of the Council's Early Retirement Scheme
- b. supported the Chief Executive's action to suspend the current scheme until further advice and investigations have been completed
- c. currently taking action to establish whether any of the payments already made under the Council's Early Retirement Policies/Scheme are unlawful

- d. initiated a review of individual personnel files to establish the extent and scope of payments made since October 1996, together with establishing the financial implications of these payments in terms of capital costs to the Council, ongoing revenue costs and materiality.
- e. seeking validation of the above by Internal Audit
- f. liaised and briefed the Council's External and Internal Auditors, insurers and the Local Government Pension Administering Body on this matter.
- g. initiated a review of the Council's processes and internal controls relating to the determination of individual early retirement requests together with the reporting of the financial implications of those decisions to members.

My fiduciary duties and responsibilities to the council and local citizens require me to have responsibility for the stewardship and safeguarding of public money. In carrying out these duties I will assess the overall financial implications of this matter once the current investigations have been concluded and will then report these to members. This assessment will be carried out in full consultation with the Chief Executive, Monitoring Officer, Auditors, the Pensions Administering Body and Insurers.

Until the further investigations referred to in this report are complete and further advice is gained I am unable to advise members whether or not unlawful payments have been made nor am I able, at this stage, to make recommendations on the potential for recovery of any such payments. Therefore, at the current time, I do not consider it appropriate to issue a report under s114 of the Local Government Finance Act 1988. However, I reserve the right to do so pending the outcome of current investigations.

5. Recommendations

- 1. That the Council endorses the following actions undertaken by the Chief Executive:
 - A. The enquiry into the lawfulness of the local scheme
 - B. The suspension of this scheme in the light of the information received
 - C. The intention to notify all persons who have benefited from the scheme once the case by case review is concluded.
 - D. The launch of an investigation into how the current scheme came to be established; what professional advice was provided at the time; how the scheme has been operated and whether members have been kept informed.
- 2. That a panel comprising the Leader, Portfolio-holder for Resources and Chairman of the Resources DSP is appointed to oversee the investigation referred to in D above, and
- 3. That in view of the legal advice received the Council terminates the local scheme provisions within the approved pension policy forthwith.
- 4. That a further report be made to the next ordinary meeting of the Council.