

REPORT TO COUNCIL

REPORT OF: Chief Executive

REPORT NO.: CEX357

DATE: 26th October 2006

TITLE:	Update on progress regarding issues arising as a result of the Local Pension Scheme	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	N/A	
COUNCIL AIMS/PORTFOLIO HOLDER NAME AND DESIGNATION:	Councillor Frances Cartwright	
CORPORATE PRIORITY:	Use of Resources	
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:	None.	

1. INTRODUCTION

In accordance with the minute of the last Council meeting I have prepared this report to up-date members on the implementation of the resolution approved at that meeting

2. Recommendation

That the actions of the Chief Executive in responding to the issues raised by this case be noted.

3. Progress of the Investigation

Formation of the Member Panel

The member panel has been formed and met twice to agree the remit and format for the investigation.

The panel determined that the investigation proceeds in two parts. The first part will be to ascertain the factors that led to the Council adopting this scheme in 1996/7. This investigation will be externally led and an appointment has been made. The second part will focus on how the scheme has operated since its introduction. This part will be internally led by one of the Council's Strategic Directors.

Further legal advice

The Council has sought and received further legal advice clarifying the situation regarding recipients of pensions under this scheme and detailing any implications for the Council's policy on rule of 85 retirements.

4. Impact on persons receiving a pension under the local scheme

The Council has identified 23 persons who took early retirement and received their pension under the provisions of this scheme during the ten years it was operating for. As a result of the further legal advice received on the 2nd October it does not appear that any of the payments are unlawful principally because they are properly certificated. The advice states "On reflection, my view is that the payments were not unlawful" and goes on to say "If the payment were lawfully made from the fund, then as matters stand I can see no basis upon which they could be recovered from the recipients".

There remains the more contentious and difficult area of whether the Council could, or should, be initiating any action to seek a court order to quash any of these certificates, which if successful, could result in the termination of future payments by the administering authority (Lincolnshire County Council). As recognised in the further opinion this is a very complex area of legislation and the outcome of any application is extremely uncertain. Firstly although the Council may have accepted that the scheme was unlawful this view is likely to be strongly challenged by the recipients and unions. Even if this aspect is settled then the court would need to consider case-law such as *Rootkin v Kent* which implies that once the Council has determined that a payment should be made it cannot rescind it. The QC who has been advising us on this case recognises that there is a considerable area of doubt regarding the Council's ability to withdraw certificates in these circumstances, although he ultimately advises that the Council should consider this course of action. However he advises that any such withdrawal could only be contemplated following a re-determination of the eligibility of each of these individuals at this moment in time. He also draws attention to the options that exist within the regulations to determine that such cases could still be eligible on compassionate grounds as individuals have, through no fault of their own been led to believe that they could take early retirement.

As a consequence of this further advice I have arranged for all of these cases to be reviewed to ascertain that if a determination was conducted now, how many would be eligible under other parts of the Councils scheme and whether the remaining cases would be eligible on compassionate grounds.

I will also be meeting with officers from Lincolnshire County Council, who are the administering authority, to ascertain their views on the situation.

In view of the complexity of the situation and the fact that I have not yet concluded the work needed to assess the full implications for the individuals affected in the light of this further opinion I have deferred contacting persons who have received pensions under the provisions of the local scheme.

The additional advice has not raised any concern regarding the Council's policy for rule of 85 retirements.

5. External Audit

External audit have been kept informed by both the Section 151 Officer and myself. They have undertaken a spot audit of three of the 23 cases and they have not intimated that they intend to take any action against the Council as a result of their findings. As members will be aware they have now signed off the accounts for 2005/6, viewing that any liability associated with this issue is not significant in financial terms. However they have not yet signed-off the audit for 2005/6.

6. Administration of requests for early release of pension

In consultation with our auditors the section 151 Officer has designed, and put into effect, a full and detailed process for the examination and determination of request for early release of pension. This procedure also involved the monitoring officer and HR manager with the final decision being made by myself.

7. Union view

At the request of the unions extracts from the Councils opinion received by the authority have been released to them. It remains a possibility that they may seek to challenge the decision to terminate this scheme through the Industrial Tribunal as they have intimated that they intend to lodge a collective grievance regarding the decision of Council to terminate the scheme.

8. Live cases

Members will recall that this review was triggered by an application under a provision of the scheme that allowed someone to leave the Council and seek to claim early release of their pension when they became fifty. The ex-employee who submitted this claim has been informed that the claim can not be acceded to because the scheme has been terminated and in the light of this information has withdrawn their application.

5. Comments Of Section 151 Officer

I have fully liaised with External audit on this issue and have also requested Internal Audit to undertake a review of the affected cases. As the Chief Executive has mentioned above, the Governance report has been signed off by External Audit in respect of the Statement of Accounts 2005/6.

Officers will produce a further report to members once the review of affected cases has been concluded by Internal Audit and a further evaluation of any potential recovery action has been undertaken in light of the Counsel's opinion.

The internal controls relating to the determination of early termination of employment have been reviewed and the new procedure referred to in paragraph 6 above has been introduced for early release of pension requests and redundancy.

6. Comments Of Monitoring Officer

The release of legal advice in this report in no way waives the Council's right to legal privilege in general in this matter. It is acknowledged, in such a matter, openness and transparency are essential and in the public interest.

No decisions should be made on future conduct until a full investigation of each case has been concluded and all parties involved informed of the position. This Council cannot, itself, take an action for judicial review to quash a certificate given by it.

Duncan Kerr
Chief Executive