

# REPORT TO COUNCIL

**REPORT OF: Chief Executive**

**REPORT NO. CEX383**

**DATE: 25 October 2007**

<b>TITLE:</b>	<b>SKDC Pension Policy: The "Local Scheme"</b>
<b>FORWARD PLAN ITEM:</b>	N/A
<b>DATE WHEN FIRST APPEARED IN FORWARD PLAN:</b>	N/A
<b>KEY DECISION OR POLICY FRAMEWORK PROPOSAL:</b>	YES

<b>COUNCIL AIMS/PORTFOLIO HOLDER NAME AND DESIGNATION:</b>	COUNCILLOR MRS. MAUREEN SPENCER-GREGSON OBE	
<b>CORPORATE PRIORITY:</b>	ALL	
<b>CRIME AND DISORDER IMPLICATIONS:</b>	YES	
<b>FREEDOM OF INFORMATION ACT IMPLICATIONS:</b>	<p>THIS REPORT IS AVAILABLE VIA THE LOCAL DEMOCRACY LINK ON THE COUNCIL'S WEBSITE <a href="http://WWW.SOUTHKESTEVEN.GOV.UK">WWW.SOUTHKESTEVEN.GOV.UK</a></p> <p>Appendix A to this report is exempt information by virtue of paragraph 2 of Schedule 12A of the Local Government Act 1972 (as amended). Appendix B, parts 1, 2 and 3 are exempt information by virtue of paragraph 5 of Schedule 12A of the Local Government Act 1972 (as amended).</p>	
<b>INITIAL EQUALITY IMPACT ASSESSMENT</b>	<b>Carried out and appended to report?</b> N/A	<b>Full impact assessment required?</b> N/A

<b>BACKGROUND PAPERS:</b>	CEX352; CEX357
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## Recommendations

- 1. That the Council note and accept the outcome of the investigations into the adoption by the authority of a local pension scheme in 1996 and endorse both the actions taken to resolve this matter and the action plan that has been prepared.**

## Introduction

2. On the 7 September 2006 I reported to Council (report number CEX352) regarding the receipt of an Opinion from a Queen's Counsel on a specific aspect of the authority's pension scheme which, with certain caveats, permitted an employee (or ex-employee) to retire on full pension if their age and length of service totalled 70 or more (hereafter called the "Rule of 70").
3. Local Authority pension schemes are a mixture of statutory provisions (which are binding on all Authorities), and discretionary provisions (which Local Authorities have the discretion to adopt, or vary, in accordance with the powers contained in the relevant legalisation). The "rule of 70" was a discretionary element. It is perfectly feasible, and in practice, quite common for an employee to be eligible to receive a pension under both the statutory and the discretionary provisions.
4. In the opinion of the Counsel this provision, which had been introduced in 1996, was unlawful. At that Council meeting I explained that the legal consequences of this view were complex and that both a further Opinion and detailed investigatory work would need to be completed before I could make any recommendations to Council regarding potential action.
5. To try to assist particularly those members who were not on the Council at the time, the key point of difficulty was that the regulations enable an early retirement (currently after the age of 50, but shortly to rise to 55) provided that such a retirement is in the interest of the efficiency of the service. The rule of 70 adopted by the Council in 1996 granted an early retirement without requiring the Council to calculate the consequence for each application. When the scheme was introduced it had been asserted that, taken in totality, the scheme was in the interests of the efficiency of the Council. The Counsel's advice was that the legislation could not be interpreted in this way and required an assessment on a case-by-case basis. The Counsel concluded that the Council's scheme was fundamentally misconceived in law.

6. It is important to understand that this did not mean that all, or indeed any, of the payments made under the scheme were unlawful. The lawful status of each one would depend on whether there were any other elements of the scheme that entitled them to draw a pension and whether there was, in fact, an assessment of the interests of the efficiency of the service conducted on a case by case basis.
7. At that meeting the Counsel resolved the following:  
that:
  - (1) the Council endorse the following actions taken by the Chief Executive:
    - i. The enquiry into the lawfulness of the local scheme;
    - ii. The suspension of this scheme in the light of the Information received;
    - iii. The intention to notify all persons who have benefited from the scheme once the case by case review is concluded;
    - iv. 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 be appointed to oversee the investigation referred to at (iv) above;
  - (3) That in view of the legal advice received the Council terminates the local scheme provisions within the approved pension policy forthwith; and
  - (4) That a further report be made to the next ordinary meeting of the Council.
8. In accordance with this minute a further report was made to the meeting of the Council on the 26<sup>th</sup> October (report CEX357) where it was explained that a careful analysis of the cases had identified a total of 23 recipients of the scheme and explained the further advice received from the Counsel regarding the Council's options for dealing with these cases.

9. This second advice is complex and I have included a full copy of it as an exempt appendix B to this report. In essence the Counsel asserted that as these payments were properly certified there was no legal basis to seek recovery of payments made to-date. However he went on to advise that if, following a more detailed case by case consideration, the Council was of the opinion that these claimants were not eligible to receive their pension under any other provision of the scheme, then the Council should initiate a process (which he described in detail) which could ultimately conclude with the withdrawing of the certificate by the Council thus terminating the pension payments.
10. In accordance with this advice the Council commissioned its internal auditors, Pricewaterhouse Coopers to undertake a detailed file by file review, not only of the 23 cases referred to in my report to Council in October, but of all the 54 cases of employees who had retired early, on any grounds, since 1996.

This analysis identified a total of 23 cases which did not meet with a separate provision of the national scheme known as the rule of 85, or had a current age of 65 and were, therefore now entitled to receive an unreduced pension.

11. The files on these remaining cases were then examined in detail to ascertain whether there was any business case or assessment made at the time. The results of this analysis were then provided to the Counsel to enable him to form an opinion on whether there was sufficient assessment made at the time to warrant that the payment was lawful.
12. This analysis has taken some time to complete however on the week beginning the 1 October 2007 I received a further opinion from the Counsel explaining that he was satisfied that the Council had a legal basis for all of these cases and that certificates for the release of the pensions had been lawfully given. The Council should take no further action in respect of those cases identified and reviewed.

### **Outcome of investigations**

13. Separately from the determination of the implications of the Counsel's advice on these individual cases the Council meeting also commissioned two investigations; one into the circumstances that led to the adoption by the authority of this scheme, and one into how the scheme had operated since its adoption. The Council also established a panel to oversee these investigations and to receive a report back.

14. This panel met on the 7 February 2007 and received reports from the persons appointed to conduct these investigations. At this meeting it identified a number of recommendations and learning points. I have assembled these into an action plan which has now been implemented in consultation with the Cabinet portfolio-holder Councillor Maureen Spencer-Gregson. A copy of this plan is enclosed as Appendix A.

### **Lessons Learnt**

15. Some of the principle learning points to emerge have been the importance of having strong corporate governance arrangements, including the clear separation of statutory duties and the need to take clear professional advice, particularly when the Council is considering proposals that are known to be unusual (indeed they were described in the original report as radical).
16. The new structure introduced last year has strengthened the importance of proper procedures as well as securing the right outcomes and this has been reinforced by specific training for all service managers.
17. The consequences of having this policy have been extremely time-consuming, but they could have been a great deal worse. Relationships with the unions and staff have been affected by the unavoidable sudden withdrawal of the scheme. Estimated direct costs in payments to Counsels and investigators total some £7,000 but indirect costs in terms of my own time and that of other very senior officers in the Council are likely to be considerably in excess of this figure.
18. One consequence of the current situation has been that our external auditors have not formally concluded their audit or issued an audit certificate for last year. Hopefully now that this matter has been concluded this certificate will be issued.

### **Comments of the Monitoring Officer**

19. The Monitoring Officer has been informed and consulted throughout the investigation. As Legal Services Manager I have instructed Counsel and obtained the legal opinion attached at appendix B(I). I am satisfied legal opinion received is robust and unequivocal. This Appendix is attached as an exempt appendix for reasons of legal professional privilege. This advice must remain confidential to the Council. If this advice is to be discussed by Members at the Council meeting it must be done so with the exclusion of the press and the public.

20. All cases reviewed can demonstrate lawful reasons for early release of pension being either "rule of 85" or redundancy including retirement in the interests of efficiency (r. 26 Local Government Pension Scheme Regulations 1997). As such, Council are advised that no action should be taken in respect of all the cases reviewed.

### **Comments of the Deputy Section 151 Officer**

21. The Council's Section 151 Officer has been directly involved in the review and investigation of this issue since its emergence last year. Counsel opinion has confirmed that no unlawful expenditure has been incurred and improved corporate governance arrangements are now in place and are detailed at appendix A.

The Section 151 Officer, in consultation with the Council's external auditors and the County Pension Scheme administrator, has reviewed the early release arrangements and procedures and the findings of this review has been incorporated into the updated corporate governance arrangements.

The Council's Section 151 Officer may wish to provide further comments on this matter at the Council meeting.

Furthermore the Council's external auditors have been kept fully informed of developments in this matter and will review the issuing of the audit certificate in due course.

Duncan Kerr  
Chief Executive