

## Cornwall Council

Report to: **Tamar Bridge and Torpoint Ferry Joint Committee**

Date: **5 December 2014**

Title: **LGPS 2014 Discretions Policy**

Portfolio Area **Transport and Waste**

Divisions Affected **All in the vicinity of the Ferry**

Relevant Scrutiny Committee: **Scrutiny Management Committee**

Relevant Portfolio Advisory Committee (Cabinet (executive) decisions):

Key Decision:	<b>N</b>	Approval and clearance obtained:	<b>Y</b>
Urgent Decision:	<b>N</b>	Date next steps can be taken: (e.g. referral on of recommendation or implementation of substantive decision)	<b>Normally 10 calendar days after decision for Cabinet</b>
Appropriate pre-decision notification given where an executive Decision?			<b>N</b>

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**Recommendations:** The draft Discretions Policy, as appended to this report, is recommended to the Joint Authorities for approval.

### 1. Executive summary

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- 1.1 The new Local Government Pensions Scheme (LGPS) 2014 requires employers to state their position in relation to a number of discretionary elements of the scheme.
- 1.2 These discretions are usually associated with an immediate cost to the employer that may, in some circumstances be eventually recovered or lead to an overall financial benefit through lower salary costs or beneficial reorganisation. In other circumstances, the upfront cost may lead to other non-financial benefit, or the cost may be justified on compassionate grounds.
- 1.3 If an employer chooses to allow a discretionary element where it will provide longer term advantage, the policy should state what analysis will take place and the associated approval process.
- 1.4 The Tamar Bridge Act 1979 requires that Cornwall County Council and its successors administer the Joint Committee's pension fund but it does not record that Cornwall operates as the employer for pension purposes.
- 1.5 A separate policy for the undertaking is believed to necessary so that financial calculations are appropriate to the undertaking and that the approval process reflects the joint nature of the undertaking. However, given that Cornwall Council administers the Joint Committee's pension fund, the proposed policy appropriately reflects much of the approach taken by the Council in regard to its own employees, reducing potential administrative issues and costs that might otherwise be associated with a completely independent approach.
- 1.6 It is proposed that the Joint Committee recommend adoption of this policy to both Authorities so that the requirement within the 2014 Scheme for each employer to have such a policy may be progressed.

## **2. Background**

- 2.1 The Joint Committee is a Scheduled Body for the purposes of the Local Government Pension Scheme. The 1979 Tamar Bridge Act requires that the Joint Committee's participation in the scheme is administered by the Cornwall Pension Fund.
- 2.2 The 1979 Tamar Bridge Act records that the employer of staff employed for the purposes of the undertaking shall be the Authorities acting together through the Joint Committee. However, the Joint Committee does not have a completely free-hand to act as

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employer when a decision has financial implications. As with other financial matters, the Joint Committee recommends an approach in relation to pension scheme to both Authorities.

- 2.2 The Local Government Pensions Scheme 2008 was replaced in April 2014 with a new scheme, LGPS 2014. As with the 2008 scheme, LGPS requires each employer to have a policy on how the discretionary elements of the scheme will be applied. The regulations do not provide the employer with any default position that may be adopted if the approach to the discretionary elements has not been stated.
- 2.3 No Discretions Policy has previously been adopted by the Joint Committee, but no request has previously been made to consider applying a discretion, nor have circumstances arisen where the compassionate discretions may have been considered. However, without a policy, the Joint Committee is open to challenge and a policy should be adopted.
- 2.3 The areas of discretion within LGPS 2014 have been extended beyond the limited areas within the 2008 scheme and cover:
- additional contributions;
  - early payment of retirement benefits without reduction;
  - early payment of benefits related to "85 year rule" transitional arrangements;
  - early retirement on compassionate grounds;
  - flexible retirement;
  - increasing pension and;
  - transfer of service into LGPS 2014.
- 2.4 If exercised, the discretions result in cost for the employer. In some circumstances this cost may be recovered particularly if exercise of the discretion leads to reorganisation after an employee retires as a result of benefiting from discretionary enhancements. Benefit may also arise from the replacement of a retiring employee. The Discretions Policy describes the process of financial assessment in such cases.

### **3. Outcomes/outputs**

- 3.1 The LGPS 2014 legislation and regulations require that the Joint Committee develops a Discretions Policy for the scheme and a policy must be adopted.
- 3.2 The Joint Committee's Policy should, as far as is practical reflect those of the Joint Authorities.

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- 3.3 The flexibility of the organisation's structure and establishment levels is restricted by the infrastructure it operates and the related legislative and best practice frameworks. These restrictions and the associated stability of employment roles within the undertaking should be reflected in financial calculations within the policy, ensuring that the full financial benefit of any discretionary payment is considered.
- 3.3 The Joint Committee is also required to consider which posts should be involved in the decision making process for assessment and the possible release of funds. The draft Policy attached has considered the joint nature of the undertaking and this is reflected in the decision making roles within the Policy.

### **4. Options available and consideration of risk**

- 4.1 Both Authorities' policies are that, by default, they will not utilise any of the discretions. Whilst the Joint Committee may choose to adopt a different position, there is no clear financial or organisational justification for doing so.
- 4.2 The Cornwall and Plymouth policies provide for some flexibility in regard to waiving actuarial reductions for early payment or to allow early release of pension. The Plymouth policy provides for such discretion only on compassionate grounds. Cornwall's Policy provides for an assessment of financial or organisational benefits over the two years following the payment and discretions may therefore be exercised on purely financial grounds or where there is clear organisational benefit.
- 4.2 As the Joint Committee's membership of the LGPS is administered by Cornwall Council, the draft policy attached as Appendix 1 in most regards reflects the stance taken by Cornwall.
- 4.3 Within some Regulations, the policy therefore allows managers to consider a realistic assessment of the financial or organisational benefits to the undertaking, rather than limit consideration purely to those applying because of desperate circumstances.
- 4.3 The proposed policy provides a longer term assessment of the financial benefit to the organisation of certain discretionary payments when compared to Cornwall's Policy. The extension of financial assessments from the two years of Cornwall's policy to three years reflects the generally higher levels of stability of employment within the undertaking and the organisation's incremental pay structure following job re-evaluation. In

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comparison to the authorities, there is less risk that potential savings would not be realised due to further reorganisation.

- 4.4 As adoption of Cornwall's timeframes would mean that third year savings are not considered in the decision making process, any financial case would be more difficult to achieve. As this would increase the risk that discretions would not be exercised when a saving would otherwise be achieved, the draft TBTF policy has incorporated analysis over a period of three years.
- 4.4 It is not proposed that the policy modifies Cornwall's rigorous approach to any cost/benefit analysis and no increased risk exists in this regard.
- 4.4 Both authorities provide specific postholders within the Council with decision making responsibilities. It is felt that the given that the policy is specific to the undertaking and the organisation's joint nature, the decision makers should hold posts that are employed by the Joint Authorities. It is proposed that the General Manager and Business Manager undertake the roles ascribed to various Officers within the two authorities with senior officers in both Councils being required to approve applications of a discretion which involves significant initial costs.
- 4.5 Any risk associated with the two decision making postholders assessing their own post, can be removed by requiring the involvement of senior Officers of the Joint Authorities. The proposed Policy takes this approach.
- 4.6 Staff side consultation has reduced the risk of any dispute associated with the policy.

## **5. Proposed Way Forward**

- 5.1 It is proposed that the attached draft policy, based on the Cornwall model is recommended to both authorities.
- 5.2 Any proposal which deviated from the stance taken by Cornwall Council that there must either be specific benefit to the organisation from exercising discretions or that they are exercised on compassionate grounds would be difficult to justify and it is proposed that the Joint Committee follow this general position. The draft policy reflects this position.
- 5.3 The draft policy proposes that the appropriate Directors in the Joint Authorities review and approve any proposal to apply a discretion which involves initial costs of £50,000 or more.

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- 5.3 The draft policy proposes that the appropriate Directors in the Joint Authorities determine any discretion for the General Manager post and that the General Manager consults the Directors in regard to any discretion for the Business Manager.

### 6. Implications

Implications	Relevant to proposals Y/N	
Legal/Governance	N	There are no legal implications arising directly from this report as it is in keeping with the 2014 Regulations and the discretions adopted in accordance with these Regulations.
Financial	Y	Exercise of non-compassionate discretions under LGPS 2014 will result in short term costs and budgetary impact which would usually be recovered in future financial years.
Risk	Y	Failure to adopt a policy would leave the organisation open to claims given that LGPS 2014 regulations do not provide a default position to be adopted if no policy in relation to discretions is adopted.
Comprehensive Impact Assessment Implications		
Equality and Diversity		None.
Safeguarding		N/A
Information Management		N/A
Community Safety, Crime and Disorder		N/A
Health, Safety and Wellbeing		N/A
Other implications		None

### Supporting Information

## Cornwall Council

### Appendices:

Appendix 1 Draft Tamar Bridge and Torpoint Ferry LGPS 2014 Discretions Policy

### Background Papers:

None

### Approval and clearance of report

#### All reports:

<b>Final report sign offs</b>	<b>This report has been cleared by OR not significant/not required</b>	<b>Date</b>
Legal (if significant/required)	Simon Mansell	24.11.14
Finance Required for <b>all</b> reports	Andy Brown	26.11.14
Equality and Diversity	<b>not required</b>	