

Report No.

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: GENERAL PURPOSES & LICENSING COMMITTEE

Date: 11th July 2017

Decision Type: Non-Urgent Non-Executive Non-Key

Title: FORFEITURE OF LOCAL GOVERNMENT PENSION SCHEME RIGHTS

Contact Officer: Angela Huggett Head of HR Strategy and Education
Tel: 020 8313 4029 Email: angela.huggett@bromley.gov.uk
David Kellond, Pensions Manager
Tel: 020 8461 7503 E-mail: david.kellond@bromley.gov.uk

Chief Officer: Director of Human Resources

Ward: Borough Wide

1. Reason for report

1.1 The Local Government Pension Scheme Regulations provide that in certain circumstances the accrued pension rights of scheme members may be reduced or entirely withheld. In order for this to be considered a formal procedure is required to determine in what circumstances, and to what extent the Council would seek to reduce a scheme members pension rights.

2. RECOMMENDATION(S)

2.1 Members of the General Purposes and Licensing Committee are asked to:

- (i) Note and comment on the report and draft policy on the forfeiture of accrued Local Government Pension Scheme rights;
- (ii) Approve the release of the draft policy to the Trade Unions for Consultation;
- (iii) Note that a further report detailing the outcome of consultation will be presented to the Committee for consideration in due course.

Corporate Policy

1. Policy Status: New Policy: The Council's pension fund is a defined benefit scheme operated under the provisions of the Local Government Pension Scheme (LGPS) Regulations for the purpose of providing pension benefits for its employees.
 2. BBB Priority: Excellent Council
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Financial

1. Cost of proposal: No Cost:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Pension Fund
 4. Total current budget for this head: £38.3m expenditure (pensions, lump sums, etc); £43.8m Income (contributions, investment income, etc); £943.8m total fund market value at 31st March 2017.
 5. Source of funding: Contributions to Pension Fund
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Staff

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: None:
 2. Call-in: Not Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): 6,076 current employees; 5,070 pensioners; 5,258 deferred pensioners as at 31st March 2017.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

- 3.1 The Local Government Pension Scheme (LGPS) Regulations contain a number of regulations allowing scheme employers to seek the withholding of, or reduction to, the accrued pension rights of scheme members in certain circumstances.
- 3.2 The regulations provide for this to be done in two ways. One may be used in circumstances where the former employee has left due to grave misconduct or a criminal, negligent or fraudulent act or omission in connection with their former employment and has incurred a monetary obligation to the former employer. The other may be used where a former employee has been convicted of an offence connected to their employment and because of which they have been dismissed. However, the second of the provisions requires approval from the Secretary of State.
- 3.3 A comparison of the two provisions is provided at Appendix 1.
- 3.4 Until recently the London Borough of Bromley, in its role as a scheme employer had not sought to apply the forfeiture regulations of the Local Government Pension Scheme. However, in response to a recent case, Counsel advice was sought on the viability of using these provisions. Although the advice in the specific case concerned was that it was not appropriate to seek the forfeiture of the former employees' pension benefits, it did provide clarity over the circumstances in which an application could be made.
- 3.5 In order to manage the process of Forfeiture the draft policy attached at Appendix 2 has been prepared. The policy provides a transparent and fair process for dealing with cases of Forfeiture whilst taking into account the relevant contextual circumstances and the requirements of Local Government Pension Regulations.
- 3.6 The Policy applies solely to employees of the London Borough of Bromley. The policy will also apply to maintained school's where the Local Authority is the employer for pension purposes. Other employers within the Fund will need to determine their own position.

4. FINANCIAL IMPLICATIONS

- 4.1 Where a direction for forfeiture is issued and applied, the appropriate administering authority must transfer out of the member's pension account the benefits which are forfeited and pay the relevant Scheme employer an amount determined by an actuary as representing the capital value of those benefits. Likewise where an amount is recovered or retained, the appropriate administering authority must transfer out of the member's pension account the amount recovered or retained and pay it to the relevant Scheme employer.

5. LEGAL IMPLICATIONS

- 5.1 The details provided in this report are drawn from The Local Government Pension Scheme Regulations 2013, principally regulations 91 to 95. However, a range of similar provisions are contained within both The Local Government Pension Scheme Regulations 1997 and The Local Government Pensions Scheme (Administration) Regulations 2008. The application of the regulations from earlier versions of The Local Government Pension Scheme would apply where these were extant at the time the former employee left.

6. PERSONNEL IMPLICATIONS

- 6.1 The Forfeiture of an individual's accrued Pension rights should only be considered in serious circumstances and certain qualifying conditions must be met as set out in the attached policy. As it is so rare a response to a survey around other London Borough's has demonstrated that as far as we can determine no other Borough has a policy in place or has had a case of Forfeiture although some have considered it previously.
- 6.2 Forfeiture also applies to other public sector organisations pension schemes such as the Police Force and also the Teaching profession.
- 6.3 A pre-consultation dialogue with two of the support staff Trade Unions recognised by Bromley (the 3rd was unable to attend the meeting) has indicated that they would not be in agreement with such a policy being introduced. Their key concerns relate to the impact both on the individual and any dependents; the fact that Forfeiture would apply to an individual's contributions to the scheme as well as the employers and the fairness of the decision making process in Bromley and in the Courts particularly where original judgements can be overturned.
- 6.4 As part of the consultation process views will be sought on how to manage the Forfeiture Policy in the course of a relevant disciplinary hearing and the need to provide HR guidance to the disciplinary hearing panel.
- 6.5 Views would also be sought on whether a right of appeal should be introduced given that the individual will already have a right to make representations to the Secretary of State in some cases and to the Panel in all cases.
- 6.6 The outcome of the formal consultation period will be presented to the Committee for consideration in due course.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	