

Report No.

Decision Maker: **GENERAL PURPOSES & LICENSING COMMITTEE**

Date: **28th November 2017**

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

Title: **FORFEITURE POLICY OF PENSION SCHEME RIGHTS -
OUTCOME OF CONSULTATION**

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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.
- 1.2 At its meeting on 11 July 2017 The General Purposes and Licensing Committee agreed a Forfeiture Policy in principle subject to the outcome of consultation with staff and trade unions. This report details the outcome of consultation.

2. **RECOMMENDATION(S)**

- 2.1 **Members of the General Purposes and Licensing Committee are asked to:**
- (i) **Consider the comments received during the consultation period and determine whether any modifications to the draft procedure should be made.**
 - (ii) **Subject to (i) above approve the implementation of the Forfeiture Policy with immediate effect.**

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.
- 3.3 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.
- 3.4 A Draft Policy was considered by the Committee at its meeting on 11 July 2017 and although agreed in principle officers were asked to review the draft and to make the policy clearer in parts particularly around decision making powers of the respective schemes.
- 3.5 Revisions were made and a draft policy was released to staff departmental representatives and to the Trade Unions for consultation purposes. The period of consultation has now closed and only one item of feedback was received during the consultation period and this was from the Trade Union UNISON.
- 3.6 Detailed below is the feedback from the Unison Regional Organiser on behalf of the Bromley Unison Branch Membership. Management's response to each point raised is detailed in bold type italics below.

3.7 UNISON Response to LB of Bromley Consultation on Pension Forfeiture Policy

"We have consulted with member representatives on our Bromley Unison Branch Committee and have the following feedback in relation to the draft Policy circulated.

UNISON members are generally not in favour of the Employer exercising the provision within their Pensions arrangements in respect of the possibility of forfeiture of a former member of staff's pension entitlements. It was felt that in the circumstances of a 'relevant criminal offence' having been committed, a court of law would be likely to have determined the appropriate punishment and it should therefore not be necessary for the Employer to implement a further sanction in the form of loss of pension. Similarly, if a member of staff has been dismissed for gross misconduct without criminal charges having been made, it is thought that the loss of employment and reputational damage should be sufficient punishment. ***(The circumstances where the policy will be used would only be in instances where either a monetary obligation has occurred to the Council as a result of an individual's misconduct or the misconduct is so serious that it would cause a loss of public confidence.)***

Whilst we understand that the intention of the Employer in this instance is to create a policy and procedure for dealing with circumstances that arise relatively rarely, UNISON is concerned that the mere fact of having such a policy in place may lead to its being used more frequently than initially envisaged. ***(Due to the limited circumstances in which Forfeiture can be considered it is not***

envisaged that the policy will be used more frequently. The number of conduct related dismissals itself is generally low, hence the use of the Forfeiture policy is likely to be very rare.)

We have some issue with the seeming lack of representation allowed for, other than that the person may make 'any representations they may wish to make in writing to the panel'. This makes some assumptions about the capacity and ability of the person concerned to do this, as well as possibly excluding the right to appoint a representative, such as a family member, Trade Union rep or solicitor to assist in providing the panel with any representations. The person may be incapacitated due to ill health (mental or physical), or they may be difficult to communicate with if they have been imprisoned, and neither of these factors should be allowed to prevent them exercising their right to make representations. It has been suggested that it may be fairer, where this is possible (and ill health or imprisonment are not prohibitive), to give the individual (or their representative) the opportunity to address the panel in person? **(This is a reasonable suggestion and the policy can be adapted to incorporate this. A proposed modification has been inserted at paragraph 5.2 of the draft policy.)**

UNISON members have also expressed concerns about the apparent lack of safeguards within the policy to ensure against it ever being intentionally or unintentionally misused or inappropriately applied. Natural justice would suggest that there should, at the very least, be a means of appeal if the former staff member believes the process to have been in some way flawed or has additional, newly arisen, evidence or mitigating factors which may need to be considered. If the right of appeal is included consideration would, of course have to be given to who would have to decide the matter – the Chief Executive or a panel of elected Members perhaps, as it would need to be people not previously involved in the case? What happens if the Chief Officer panel gets it wrong? Could the Council be liable in the event of further legal proceedings for reinstatement of the loss sustained? **(The Pension Schemes themselves provide the right to make representation directly and this would be independent of the Council. However it would not be unreasonable or inconsistent with other Council employment policies/procedures to allow an appeal stage. A panel of 3 members would be advisable as this would be consistent with the number of Chief Officers on the original panel making the decision initially.)**

If the person concerned were to have been employed by one of the Local Authority's schools, how would the Chief Officer panel be constituted? Would a panel of School Governors have to be convened? **(This is a fair point and would not be unreasonable. A Panel of Governors could be convened and then make a recommendation to the Chief Officer Panel. There is a need to demonstrate consistency of approach as well as each case being considered on its merits. In effect however this means that staff in school's would be subject to an additional layer of decision making.)**

Many concerns have been raised with regard to the rights of the partner/spouse to the pension, and the impact forfeiture may have on dependent family members, who are not guilty of any wrongdoing.

The flowchart circulated suggests that the panel should also determine "where appropriate the extent of the forfeiture". This suggests that the decision may involve the forfeiture of some proportion, but not all, of the pension entitlement in some instances however this is not necessarily made clear within the draft Policy document itself. We query how a decision might be taken with regard to part-forfeiture – for example, would this be done as a straightforward proportion (such as half, or a quarter), or would it mean forfeiture of the entitlement resulting from the Employer's contributions, whilst maintaining the funds resulting from the staff members own contributions? Perhaps more is needed within the Policy in this respect. **(Each case will be considered on its own merits and the panel will make its decision on the extent of forfeiture based on all information available to it.)**

In view of the above, under 5.4 in the Policy, we suggest the following additions;

- The impact of the forfeiture on any dependent family members and the rights of any spouse or partner/s (current or former)
- Whether the forfeiture should apply to all, or only part of, the pension

(This is a reasonable suggestion and the Policy can be adapted to incorporate this.)

We would urge the Council to consider the points submitted above very carefully due to the very serious nature of any actions that may be taken following the outcome of such a process.

Thank you for your attention to our responses.”

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. The draft policy provides a transparent and fair process for decision making in such circumstances and ensures that professional pensions advice be sought for each case being considered given the complexities of the individual pension schemes.
- 6.2 Officer’s view is that the scheme does not apply to Councillors as they are no longer entitled to be members of the Local Government Pension Scheme due to a change of regulations previously. We have however sought legal confirmation to support this view and will notify the Committee if there is any change to the advice received and if any change to the draft policy is required.

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