

REPORT OF THE GOVERNANCE COMMITTEE

The Governance Committee met on 25 June 2024. Attendances:

Councillor Glazier (Chair)

Councillors Bennett, Bowdler, Collier, Tutt and Denis (via MS Teams)

1. Flexible Retirement Policy

1.1 The County Council previously operated a flexible retirement scheme for LGPS members which ceased in 2012. The scheme enabled an employee from age 55 to reduce their hours or move to a lower paid role, whilst accessing a proportion of their pension benefits to offset the reduction in salary.

1.2 The scheme was intended to provide employees greater flexibility in their approach to retirement and mitigate the 'cliff edge' effect of the now abolished compulsory retirement age of 65 years. It was also designed to support the business needs of the organisation by maintaining skill retention and supporting effective succession planning.

1.3 The abolition of the default retirement age on 1st October 2011 prompted a policy review and consequently the scheme ceased due to several coinciding key factors mainly:

- the abolition of the compulsory retirement age at 65 years lessened the need for the scheme particularly with other available flexible working options, and a voluntary redundancy scheme in operation. It also created some uncertainty around the end date of a flexible retirement arrangement and therefore it's implied value and cost effectiveness;
- the scheme was not considered to meet the business needs of the council based on the recruitment context at that time. In particular, following the 2007 financial crisis there were more skilled recruits available and less need to retain existing employees; and
- the rule of abatement restricting earnings applied, which made the scheme less appealing. Abatement no longer applies (except in the cases of tier 3 ill health retirement only).

1.4 The Council's recruitment context has changed significantly. We are now experiencing an increasingly competitive recruitment environment where it is more difficult to attract and retain skilled employees. This warrants a greater focus on meeting the needs of a maturing workforce.

1.5 The rise in cost of living is also likely to have an impact on financially viable options for flexible working as staff approach retirement age. A maturing workforce, particularly those with caring responsibilities, are more likely to want to consider a financially balanced decision around flexible working.

1.6 A benchmarking exercise has shown that many authorities have continued to successfully operate a flexible retirement scheme despite a fluctuating economic and social climate, and the legislative change in 2011.

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Supporting information

1.7 This report proposes the reintroduction of a flexible retirement scheme that facilitates a permanent reduction in an employee's contractual hours or grade (for example an internal role transfer at a lower grade) whilst accessing their pension benefits.

1.8 The scheme would be underpinned by the following key principles. A flexible retirement arrangement must:

- accompany a mutually agreeable reduction in contractual working hours or grade and therefore pay;
- be beneficial to the service and sustainable for ongoing business continuity; and,
- present no additional cost to the organisation (for example, in relation to waiving pension reductions for early access to benefits).

1.9 Employees would need to discuss and agree a business case with their manager, demonstrating how the arrangement would support the business needs of the service. HR would provide guidance for managers to ensure the process was managed appropriately and consistently. In approving requests, managers would need to consider the sustainability of an ongoing flexible retirement arrangement, bearing in mind that there is no expectation of a default retirement age or obligation to determine an end date.

1.10 In terms of a minimum reduction in contractual hours, it is recommended that this is at least 20%. This is broadly in line with other authorities who report a minimum percentage reduction between 20% - 50%. It is worth noting that as part of the policy review undertaken in 2012, managers reported that a 20% reduction was not enough to make an effective saving, enable the backfilling of the reduced hours, or effectively plan for succession. It is therefore propose that whilst any policy includes a 20% reduction in hours as a minimum, the service determines the appropriate minimum reduction in the context of business needs including retention of skills, experience, and succession planning. The reduction in contractual hours should be understood to be a permanent reduction.

1.11 If agreed, to support the implementation of the scheme, a communications plan will be drawn up to provide information and details for managers and staff on the scheme, the key points and the application process.

1.12 The scheme is not expected to incur any cost to the organisation. As stated above, it is expected that the Council would not waive any actuarial reduction and/or "strain" cost for early access to an employee's pension. This has been made clear in the draft Policy, a copy of which is attached as Appendix 1 of the report. Set against this background, the key consideration in relation to approval is around the needs of the service and business impact. As such, the draft scheme proposes that the authority to approve flexible retirement requests sits at Assistant Director level.

1.13 Provision to allow an active member who has attained the age 55 or over to reduce their working hours or grade and receive immediate payment of all or part of their retirement pension is contained within The Local Government Pension Scheme (LGPS) regulations – R30(6) and TP11(2). At present, the Council's Local Government Pension Scheme Employer Discretions Policy notes that the Council does not operate a Flexible Retirement Policy. If a Flexible Retirement Scheme is agreed to be implemented, the local discretions will be updated to reflect this.

1.14 The Committee recommends the County Council to:

✧ approve (1) the implementation of a flexible retirement scheme for employees (excluding those on Teaching terms and conditions); and

(2) that the Local Government Pension Scheme Employer Discretions Policy is updated accordingly as set out in 1. 13 of this report.

2. Amendment to Constitution – Scheme of Delegation to Officers

2.1 The County Council's Scheme of Delegation provides the Director of Communities, Economy and Transport (CET) with authority to perform a number of functions and make certain decisions across the range of services that make up the directorate. National policy, legislative changes and the need to more efficiently respond to specific scenarios can result in new and amended functions that need to be performed by the CET directorate. To ensure that decisions are taken at an appropriate level, and are capable of being taken within prescribed timeframes, certain changes and additions are proposed to the Scheme of Delegation to Officers.

2.2 The changes proposed in this report are as a result of the creation of the King Charles III England Coast Path National Trail, which is covered by the Countryside & Rights of Way (CROW) Act 2000 and the Marine & Coastal Access (MCA) Act 2009. Changes are also proposed in relation to the delegation of powers within Sections 15 and 16 of the Commons Act 2006. Respectively, these powers relate to the withdrawal of Town & Village Green applications by an applicant and the 'exchange' of Common Land, typically as a result of a development.

Proposed amendments to the Scheme of Delegation

King Charles III England Coast Path National Trail (KCIIECP)

2.3 The KCIIECP is a new 2,800-mile National Trail running around the coast of England. The Trail is currently being implemented on the ground by Natural England. However, once complete, the ongoing management of the Trail will fall to Access Authorities (typically County and City Councils or National Parks) to manage. The East Sussex section of the Trail is due to open in 2024/25.

2.4 Typically, the KCIIECP will run over existing public rights of way or highways. In these cases, the Highways Act powers to maintain and enforce the public's right of way are already delegated to the Director of Communities, Economy and Transport.

2.5 However, where public rights of way or highways do not exist along the coast, Natural England is required to create strips of 'Access Land', to ensure continuous public access. The public has access over this land on foot. The powers to manage and enforce public access under the CROW and MCA Acts are not currently delegated to officers.

2.6 Once the Trail is open, this duty will fall to East Sussex County Council (ESCC), and it is proposed that the powers detailed within Appendix 2 of the report be delegated to the Director of Communities, Economy and Transport. This would also be in keeping with the equivalent Highways Act powers already delegated to the Director (see paragraph 2.4).

Section 15, Commons Act 2006 – Town & Village Green application – withdrawal by applicant

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2.7 A member of the public can make an application to ESCC to have an area of land registered as a Town & Village Green (TVG.) In line with legislative requirements, such applications are subject to a range of legal tests and are, following a report and recommendation made by officers, ultimately confirmed or refused by ESCC's Commons and Village Green Panel.

2.8 Applying to register a TVG can be a lengthy and complex process for an applicant to take on. Due to the consultations required, and length of time an application may take to conclude, the situation on the ground in terms of access can also change before the application is concluded. Therefore, an applicant may, for their own reasons, wish to withdraw their TVG application.

2.9 Where an applicant wishes to withdraw their application, ESCC consults the various interested parties and also places notices on site to draw out local comments. If no objections are received, there is currently no delegation in place for a decision to be made at Officer level. A request to withdraw can therefore only be decided on by resolution of a Commons and Village Green Panel. It is proposed that if, following consultation, no objections are received, power should be delegated to the Director of Communities, Economy and Transport as set out in Appendix 2 to enable a TVG application to be formally withdrawn.

2.10 If, following consultation, objections are received to a proposed withdrawal of a TVG application, then the officer recommendation and ultimate decision would be referred to the Commons and Village Panel to consider.

Section 16, Commons Act 2006 – joining application for de-registration and replacement of Common Land

2.11 Section 16 of the Commons Act 2006 allows an applicant to de-register land that is registered as Common Land (CL). That Section also allows for land to be provided to 'replace' the CL that has been de-registered. The de-registration and replacement of CL is typically necessary to allow developments which have been granted planning permission to progress.

2.12 Such applications are usually a matter between the applicant and the Secretary of State for Environment, Food and Rural Affairs. However, where a public right of way runs across the CL to be de-registered, ESCC is required to become a joint applicant. (It should be noted that, if a diversion of the public right of way in question is also necessary, that would be dealt with by powers within the Town & Country Planning Act 1990 or Highways Act 1980, both of which are already delegated to officer level within CET.)

2.13 In these cases, the primary applicant (usually a developer) carries out all public consultation and liaison with the Secretary of State, meaning ESCC is a minor party to the application whose sole interest is the existence of the public right of way which runs across the CL. Therefore, where ESCC is required to join applications due to the existence of a public right of way, it is recommended that this power is delegated to the Director of Communities, Economy and Transport as set out in Appendix 2.

2.14 The Committee recommends the County Council to:

- ☆ approve (1) the amendment of the Scheme of Delegation to Officers as set out in Appendix 2 of this report.

3. Amendment to the Constitution – Employee Code of Conduct

3.1 The Employee Code of Conduct (ECoC) forms part of the Council's Constitution, as well as being reproduced as a standalone document provided to employees via the staff intranet and Webshop for school employees. The ECoC sets out the minimum standards of conduct that employees will be expected to observe when carrying out their duties. The document is maintained by the Human Resources Team and is periodically reviewed to reflect any changes in best practice, legislation, or the Council's operational context.

3.2 Following a recent review of the ECoC, it's proposed that it is updated to include additional wording that formally confirms employees must not access the records of relatives or friends who receive services from the Council. Various minor amendments and clarifications are also proposed, as described below. An amended copy of the ECoC is attached as Appendix 3, with the proposed amendments shown as tracked changes.

Access to records

3.3 As the Governance Committee will be aware, the Council provides employees with comprehensive training on data protection, confidentiality, and information security, and restricts access to sensitive data only to those employees who need to access it in the course of their work. However, there have been isolated cases where employees have accessed the records of relatives or friends who are accessing services from the Council. To help mitigate the risk of future incidents, it's proposed that the ECoC is amended to:

- State that employees should declare any potential conflict of interest between their job role and council services received by relatives or friends;
- Actively state that employees must not access records relating to relatives or friends;
- Amend the paragraph giving examples of where a conflict of interest declaration should be submitted, to clarify that conflicts may relate to personal or business connections to the Council.

Other minor amendments

3.4 As part of the most recent review of the ECoC, the following minor amendments are also proposed:

- Updating the wording regarding conflict of interest declaration to confirm that employees are responsible for submitting a declaration annually, or sooner if a potential conflict arises;
- Clarifying the circumstances under which an 'offline' declaration form should be used and updating the list of departmental coordinators for offline forms. It's also proposed that for confidentiality purposes, the names of individual coordinators be removed from the version of the ECoC included in the externally published constitution; and
- Updating where employees can access further guidance on politically restricted posts and removing a reference to defunct guidance on intellectual property.
- Changes to the formatting of the ECoC in line with best practice and house style.

3.5 The Committee recommends the County Council to:

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✧ approve (1) the following amendments to the Constitution, which relate to the Employee Code of Conduct:

- i. additional wording to formally confirm that employees must not access the records of relatives or friends who receive services from the council; and
- ii. minor amendments and clarifications as set out at Appendix 3 of this report.

25 June 2024

KEITH GLAZIER
(Chair)