



Report of: **Assistant Chief Executive, Governance and HR**

Meeting of:	Date	Ward(s)
Audit Committee	20 September 2016	All

Delete as appropriate	Exempt	Non-exempt
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SUBJECT: ABATEMENT OF PENSION DURING RE-EMPLOYMENT

1. Synopsis

- 1.1 This report provides the Committee with information regarding the reduction or suspension of a Local Government Pension on account of further employment within Local Government after an individual has retired.
- 1.2 The report explains the background to the 'abatement' rules and the current statutory provisions.
- 1.3 Information about the abatement practices of other London Authorities is also provided.
- 1.4 The Pension Board meeting of 11 April 2016 resolved that the Audit Committee be requested to amend the current policy and cease abatement of pensions.

2. Recommendations

- 2.1 To note the contents of the report.
- 2.2 To agree to amend the current Policy and cease abatement of Pensions.

3. Background

- 3.1 Abatement is a technical term regarding the reduction or suspension of an LGPS pension where a pension recipient entered further local government employment. If the annual salary in a further local government employment plus the pension in payment exceeded the value of the annual salary at the initial retirement, the pension would be reduced or potentially suspended for the duration of the further local government employment.
- 3.2 The paragraph above is phrased in the past tense. Until 31 March 1998 abatement was mandatory, but from April 1998 to March 2014 was discretionary. With effect from the introduction of the 2014 LGPS 'Care' Pension, abatement ceased. Accordingly a scheme member who only has LGPS membership from 1 April 2014 will not be subject to abatement.
- 3.3 Abatement cannot apply if a pension recipient obtains further local government employment via an agency, nor if a person is engaged as a contractor or a consultant. A pension payable to the spouse or partner of a former local government employee cannot be abated if the spouse/partner enters local government employment.
- 3.4 In respect of an LGPS pension recipient a further employment in teaching does not require assessment for abatement, and neither does any employment outside of local government.
- 3.5 Under the terms for 'flexible' retirement a scheme member aged 55 or over may, with the agreement of the employer, reduce working hours or take a pay grade reduction and receive the LGPS pension plus still receive salary without abatement. As a consequence the total of the reduced salary plus the LGPS Pension entitlement will often exceed the salary prior to reduction.
- 3.6 Pension beneficiaries seeking further work in local government usually arrange to keep their working hours at a level to ensure no reduction to the pension. Alternatively the individual will seek local government work via an employment agency, or as a contractor/consultant. These practices may be to the detriment of local government, because the individual restricts their working hours, or an Authority has to pay a higher rate to an agency or contractor/consultant.
- 3.7 As a consequence it is only the unwary individual who is caught by the abatement policy. A pension recipient who had not read or not understood the abatement policy can have an unpleasant surprise when presented with a bill for overpaid pension after it became known to the Pensions Administration team that further local government employment had commenced.
- 3.8 At present there is one Islington Council pension recipient whose Pension is being suspended due to re-employment. It is necessary to obtain regular data from new employing Councils to assess if any changes in the further employment affect the pensions payable for those who have entered further local government employment. Currently there are approximately 35 pension recipients in respect of whom earnings in further local government employment need to be assessed regularly. The assessments are time consuming for the Pensions Team, and once the up to date information working hours and pay details have been provided by the new employing Local Authority body the

calculations are complex.

- 3.9 The majority of Local Government Authorities have discontinued the practice of abating pensions due to further local government employment. Appendix 1 shows the policy of 17 other London Authorities, 11 of which do not abate in any circumstance.
- 3.10 The Pensions Sub-Committee of 30 March 2004 resolved to continue the practice of abatement, but the matter has not been re-considered since that meeting. Appendix 2 sets out the information provided and the decision made at that time.

4. Implications

4.1 Financial implications:

The cost of administering the Local Government Pension Scheme is chargeable to the Pension Fund.

4.2 Legal Implications:

- 4.2.1 There are no abatement provisions in the Local Government Pension Scheme Regulations 2013. Therefore if an employee leaves on or after 1 April 2014, draws their pension benefits and are subsequently re-employed in local government, the Council may not abate their post 1 April 2014 pension.
- 4.2.2 However the non-mandatory abatement provisions in regulations 70 and 71 of the Local Government Pension Scheme (Administration) Regulations 2008 continue to have effect in relation to pensions in payment deriving from the pre 1 April 2014 pension schemes regardless of when payment of those pensions commenced by virtue of Regulation 3(13) of the Local Government Pension Scheme (Transitional) Regulations 2014.
- 4.2.3 Under regulation 70, the Council as the administering authority must keep under review its policy concerning abatement that is, the extent, if any, to which the amount of the retirement pension payable to a member and applicable to a period prior to 1 April 2014, should be reduced (or whether it should be extinguished) where the member has entered a new employment with a scheme employer within the local government pension scheme.
- 4.2.4 In formulating its existing policy concerning abatement, the Council would have had regard to:
- 4.2.4.1 The level of potential financial gain at which it wishes abatement to apply.
 - 4.2.4.2 The administrative costs which are likely to be incurred as a result of abatement in the different circumstances in which it may occur; and
 - 4.2.4.3 The extent to which a policy not to apply abatement could lead to a serious loss of confidence in the public service.
- 4.2.5 When reviewing its existing abatement policy, the Council will need to have regard to the matters set out above. If, as a result of reviewing its policy

concerning abatement, the Council decides to amend the abatement policy, it must publish a statement of the amended policy before the expiry of the period of one month beginning with the date of its determination.

4.3 **Environmental Implications:**

The environmental impacts have been considered and it was identified that the proposals in this report would have no adverse impacts.

4.4 **Resident Impact Assessment:**

4.4.1 The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

4.4.2 A Resident Impact Assessment has not been completed because the contents of this report relate to the statutory Local Government Pension Scheme Regulations. The LGPS Regulations are made under the Superannuation Act 1972.

5. **Conclusion and reasons for recommendations**

5.1 The continuing practice of abating pensions in payment due to local government re-employment may be considered to be anomalous now that pensions earned in respect of LGPS membership after 1 April 2014 cannot be abated. Additionally continuation of the current Policy encourages individuals to seek further work in local government via an employment agency or as a consultant/contractor.

Appendices:

Appendix 1

Practice regarding abatement at some other London Authorities.

Appendix 2

An extract from the report to the Pensions Sub-Committee 30 March 2004, and the decision. The reference to the Pension Fund Panel is in respect of the meeting of 21 January 1998

Background papers: None

Final report clearance:

Signed by:

A handwritten signature in black ink that reads "Debra G Norman". The signature is written in a cursive style with a horizontal line underneath.

Debra Norman
Assistant Chief Executive (Governance
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Date

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Appendix 1

London Borough	Abatement Practice in 2016
Barking & Dagenham	No abatement
Barnet	Abatement if enhanced Ill health Pension
Bexley	Abatement if individual below age 60 (but may review)
Brent	Abatement for retirements before April 2014
Croydon	Abatement if was an early retirement with a Pension strain cost
City of London	No abatement
Ealing	No abatement
Hammersmith & Fulham	Abatement applies
Harrow	No abatement
Havering	No abatement
Kensington & Chelsea	No abatement
Kingston	No abatement
Lewisham	Abatement applies
Redbridge	No abatement
Richmond	No abatement
Tower Hamlets	No abatement
Westminster	No abatement

Appendix 2

Extracts from the report to the Pensions Sub-Committee of 30 March 2004:

3. Background

3.1 The former Pensions Fund Panel at its meeting of 21st January 1998 adopted the following discretions:-

Ex-employees in receipt of a pension from the Council who re-enter local government employment will have their pension abated in accordance with an earnings rule. Promotion in the new employment would lead to a further review. Where retirement was due to permanent ill health the Council pension is completely suspended during the period of local government re-employment without reference to earnings in the new employment.

3.15 Re-employed Pensioners abatement.

3.16 The LGPS Regulations 1995 and its predecessor Regulations prescribed a test to assess whether a Pension is to be reduced or suspended due to re-entering employment in Local Government. The test was that if Pension plus new Local Government earnings exceeds the leaving pay (as increased by index linking between the last day of service with the Council and commencement date of the new employment) then the Pension must be reduced so that the total is not greater than the leaving pay, or suspended if the new pay is more than leaving pay.

3.17 The 1997 Regulations no longer prescribed a test to assess such abatement. Regulation 109(5) states:

'In formulating their policy concerning abatement, an administering authority must have regard -

- i) to the level of potential financial gain at which they wish abatement to apply,
- ii) to the administrative costs which are likely to be incurred as a result of abatement in the different circumstances in which it may occur, and
- i) To the extent to which a policy not to apply abatement could lead to a serious loss of confidence in the public service.'

The reference to financial gain relates to an individual's entitlement both to a pension and to pay under a new Local Government employment.

3.18 Pensioners who were re-employed before April 1998 will continue to fall under the old rules unless there is a break in their re-employment of at least one month and one day.

3.19 The policy can only be in respect of further employment in Local Government (other than teaching employment). There is no power to abate a Pension on account of employment other than in Local Government.

3.20 The Pensions Fund Panel considered it appropriate to continue the present method of calculating abatement, but to reassess a case where an individual obtains an upgrading. The

previous rules only allowed reassessment where the hours change in the new employment or if a different new employment is obtained.

3.21 The Pensions Fund Panel further considered that if a recipient of an Ill-health pension obtained any further local government employment, then full abatement would apply without any earnings test. Consideration may wish to be given for new local government employment being subject to the earnings test if the employment is not comparable to the one which the individual had been considered permanently incapable of performing due to Ill-health.

3.22 The recommendation is that no change needs to be made to the current policy.

Extract from the minutes of the Pensions Sub-Committee 30 March 2004:

RESOLVED:

That the Sub-Committee agreed to:

Continue the policy described in paragraphs 3.20 to 3.21 of the agenda report, regarding reduction or abatement of pension upon re-employment in Local Government;