

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Personnel Committee

27 November 2017

Report of the Director of Education, Leisure and Lifelong Learning

Matter for Decision

Wards Affected:

All wards

Decisions on eligibility of staff to join the Teachers' Pension Scheme

Purpose of the Report

1. The purpose of this report is to seek Member approval for delegated authority be given to the Director of Education, Leisure and Lifelong Learning in order to make decisions in respect of eligibility of employees for membership of the Teachers' Pension Scheme.

Executive Summary

2. Individuals appointed to work in schools as Teachers, including Head Teachers, and Deputy and Assistant Head Teachers are automatically members of the national Teachers' Pension Scheme. There is a further group of staff employed primarily to support education in schools who, under regulations made concerning the scheme, may be eligible either as of right or upon election. Neither the primary nor secondary legislation governing teachers' pensions defines 'teacher' and, it is necessary to examine in detail roles and responsibilities where someone working other than as a teacher, as the term is commonly understood, in a school claims eligibility to be a member of the scheme.

Power to make decisions in this area is conferred by the constitution upon the Personnel Committee. A dispute as to eligibility concerning a (now former) employee RJ has arisen. The detailed examination of role and responsibilities, assessing the same against the regulations and case law, and the need for a full understanding of education delivery make this a matter best suited to a decision by the Director of ELLL, and/or senior officers authorised by him.

Background

3. This report draws the attention of the Committee to the need to properly delegate to officers the power to make decisions upon whether or not a person employed in the directorate and engaged in supporting teachers and pupils, but who is themselves not a teacher employed in a school, is eligible to be a member of the Teachers' Pension Scheme, rather than the Local Government Pension Scheme. It invites the committee to delegate that decision to the Director of Education, Leisure and Lifelong Learning.

This report is concerned with ensuring that a decision on eligibility for Teachers' Pension Scheme membership, which needs to be re-taken for the reasons set out below, is taken in accordance with the Constitution by a person or persons having the right to take that decision, and taking into account all relevant matters. It also recommends a general delegation going forwards.

The Specific matter requiring a decision

4. RJ was employed as an Adviser (Welsh Language) from 2005 to 2014, having previously been a school teacher and a member of the Teachers' Pension scheme. The role in 2005 was newly created and advertised at the time as being eligible for Local Government Pension Scheme (LGPS) membership, but not Teachers' Pension scheme. Upon appointment RJ opted not to be a member of LGPS. On retirement, RJ opted to take a capitalised lump sum in lieu of her Teachers' pension. An error was made in the calculation of this, the Teachers' Pension Agency having treated her as having been a scheme member until 2014. Upon realising their error, and seeking partial repayment from RJ, RJ argued that she should in fact have been a member until 2014, and that this council was in error in not affording her membership.

An initial decision was taken in 2014 that the 2005 classification of the post had been correct. RJ challenged this with the assistance of solicitors appointed by her Trades Union and the matter reached the Pensions Ombudsman. A point taken late in the process on behalf of RJ was that the decision in 2014 was taken without regard to a Court of Appeal case on a similar issue, *Owens v Dudley MBC*. It has been decided by the Pensions Ombudsman that, although the principles established in that case were applied correctly, the lack of awareness of the case itself on the part of the then decision maker constituted maladministration. As a matter of pragmatism, this opinion has been accepted. In arranging to retake the decision, doubt has been cast upon whether the original decision maker had delegated authority to do so since no record of delegation has been found. It is therefore recommended that a general delegation is made to cover both this decision and any future decisions which may be required

The position under the constitution.

5. Decisions of this nature are made under the Superannuation Act 1972. In accordance with Annex D to the Constitution, this power is delegated to the Personnel Committee.

The power is not delegated to the Director of Education, Leisure and Lifelong Learning by the general delegations within the constitution.

Under Part 3 of the Constitution the committee may grant delegated authority to a Subcommittee or an Officer to discharge its functions

Financial Impact

6. There are no financial impacts associated with this report.

Equality Impact Assessment

7. There are no equality impacts associated with this report

Workforce Impacts

8. There are no workforce impacts associated with this report.

Legal Impacts

9. There are no legal impacts associated with this report

Risk Management

10. There are no risk management issues associated with this report. Should the committee decide not to delegate power to the Director of ELL as recommended, then the Committee itself will make the decision required in respect of RJ

Consultation

11. There is no requirement under the Constitution for external consultation on this item.

Recommendations

12. It is recommended that Members APPROVE the proposal that delegated authority be given to the Director of Education, Leisure and Lifelong Learning in order to make decisions in respect of eligibility of employees for membership of the Teachers' Pension Scheme.

FOR DECISION

Reasons for Proposed Decision

13. To provide a proper and efficient mechanism for the resolution of questions and disputes concerning eligibility for membership of the Teachers' Pension Scheme.

Implementation of Decision

14. The decision is proposed for implementation after the three day call in period implement recommendations until the three day call-in period has elapsed.

13. Officer Contact

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