# Agenda Item S23.19/20 Review of Pensions Discretion Policy

The Council has a policy in place which states it will not agree to requests for flexible retirement (adopted December 2016) however this policy may be open to a challenge of fettering the Council’s discretion, which is unlawful.

The Council has retained the right to amend or change its policy at any time. The Pensions Ombudsman has the view that every case should be considered on its merits.

**Recommendation: that the Council amends Pensions Discretions Policy 3 to the following:**

 ‘Bayston Hill Parish Council will not agree to flexible retirement except in circumstances where Bayston Hill Parish Council considers it is in its financial or operational interests to do so. Each case

* Will be considered on the merits of the financial and / or operational business case put forward,
* Will set out whether, in addition to any pre 1 April 2008 benefits, the member will be permitted, as part of the flexible retirement agreement, to take
1. All, some or none of their 1 April 2008 to 31 March 2014 benefits, and / or
2. All, some or none of their post 31 March 2014 benefits, and
* Will require the approval of the Staffing Committee
* Where flexible retirement is being considered, there must be a reduction of at least one grade or, in the case of working hours, be a minimum reduction in hours of (say, 20% - eg the equivalent of the hours for one working day)

Waiver of any actuarial reduction on flexible retirement –

Where flexible retirement is agreed, the benefits payable will be subject to any actuarial reduction applicable under the Local Government Pension Scheme Regulations and the Local Government Pensions Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014. Bayston Hill Parish Council will only waive any such reduction, in whole or in part, where it considers it is in its financial or operational interests to do so. Each case will be considered on the merits of the financial and /or operational business case put forward and will require the approval of the Finance Committee including, where the reduction is only to be waved in part, approval for the amount of reduction to be waived’.

**The amendment of the discretionary policy would provide the Council with the option of considering requests for flexible retirement on the grounds of merit and reduce the risk of being challenged on the grounds of fettering of discretion.**