

ITEM

ITEM

Personnel Panel – 6 September 2007

**COMPENSATORY BENEFITS PAYABLE ON REDUNDANCY & TERMINATION IN THE INTERESTS OF EFFICIENCY**

**Report of the Acting Head of Personnel and Payroll**

**Statutory Powers:** Local Government Pension Regulations 2006

**Financial Implications:**

Members can see in **Appendix A** the financial implications of the possible options for making compensatory payments in the event of Redundancy that comply with the new statutory framework compared to the current policy of 'added years'.

**Purpose**

To update Members on the 2006 Regulations and the need to approve the method of calculating compensatory benefits payable on redundancy and termination of employment in the interests of efficiency. Consideration of this item relates to Corporate Priority 6 – "Improve core service provision in a cost effective way".

**RECOMMENDATION**

That the Personnel Panel be recommended to :-

- a. **Agree a mechanism and basis for calculating the amount of any discretionary payment to be made to employees who are made redundant or who leave the Council's employment on interest and efficiency grounds in accordance with The Local Government (Early Termination of Employment)(Discretionary Compensation), (England and Wales) Regulations 2006.**
- b. **Determine whether or not to allow employees to convert any compensatory element of pay into a period of membership of the Local Government Pension Scheme.**
- c. **To consider and comment on the draft Policy (Appendix B).**

**Background**

- 1.1 Since 1976 there have been special provisions available to local government employers to make discretionary payments to employees whose employment has been terminated early, either on the grounds of redundancy or in the interests of the efficient exercise of the employer's service.
- 1.2 The discretionary powers were consolidated in The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 known as the DCR.

- 1.3 As well as the DCR, authorities are also able to use the power in regulation 52 of the Local Government Pension Scheme Regulations 1997 (LGPS) to increase the length of membership of an employee.
- 1.4 With effect from 1 October 2006 the Government revoked the DCR and replaced them with new regulations to comply with the age-related provisions of the European Employment Directive which is implemented through the Employment Equality (Age) Regulations.
- 1.5 Each employer is required to produce a new policy statement relating to the exercise of its discretionary powers under the new regulations and must then apply that statement when awarding benefits to individual employees. This report sets out the detail of the changes and recommends a new policy for adoption.
- 1.6 This Policy is needed to provide flexibility in managing and shaping the workforce. Members should strike a fair and reasonable balance between affordability, fairness to employees and having the necessary management tools to assist in ensuring the Council has a well motivated responsive workforce suitable to meet the changing environment of local government service. In each individual case The Personnel Panel are presented with a fully costed statement setting out the financial implications to the Council of a redundancy decision.

## **2 THE NEW REGULATIONS**

2.1 ***The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006*** (The 2006 Regulations) came into force on 29 November 2006 but with retrospective effect from 1 October 2006 and replace the previous Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 (“the 2000 Regulations”).

2.2 In summary the new Regulations:-

2.2.1 Retain the discretionary power to waive the weekly pay ceiling placed on statutory redundancy payments and to calculate, instead, on pay up to the actual week’s pay.

2.2.2 Provide a discretionary power to award a one-off lump sum payment of up to, but not exceeding, two years’ pay (104 weeks), inclusive of any redundancy payment made.

2.2.3 Remove the power to award added years (although additional membership can still be awarded through the augmentation provisions in the LGPS).

## **3 OUR EXISTING POLICY**

3.1 The Council’s current Policy (in accordance with the DCR) provides in cases of redundancy for payment of compensatory added years to employees aged 50 and over and payment of additional number of weeks’ pay for employees under 50. In cases of retirement in the interests of efficiency, the age group is restricted to age 50 and over and compensation takes the form of added years.

3.2 Statutory Redundancy payments are established by using the Department of Trade and Industry (DTI) ready reckoner table. This calculates the number of weeks' pay due, by age and number of years' service. The current statutory maximum is £310.

3.3 However the pay used to calculate the Statutory Redundancy pay is an actual week's pay, in common with other Authorities and many other employers.

#### **4 RECOMMENDED NEW POLICY**

4.1 In light of the changes introduced by the 2006 Regulations and the legal requirement to put in place a new Policy Statement, the proposed new policy in relation to both Redundancy terminations and those in the Interests of Efficiency are attached at **Appendix B** of this Report.

#### **4.2 Redundancy**

4.2.1 For entitlement to redundancy payments, under the Employment Rights Act 1996, redundancy arises when employees are dismissed because:-

- the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was so employed; or in the place where the employee was employed.

4.2.2 In the event of a dismissal on the grounds of redundancy, employees with at least two years' continuous local government service will be eligible to receive a redundancy payment as follows:-

4.2.3 Lump sum statutory payment based on the statutory redundancy tables. **Members are requested to consider whether the pay used in calculating the Statutory redundancy pay should continue to be the actual week's pay in common with other authorities.**

4.2.4 **Plus** a compensatory one off lump sum payment of up to, but not exceeding, two years' (104 weeks) pay inclusive of any redundancy payment made. Councils have used the statutory redundancy pay as a basis for calculating the compensatory payment. This has been done by applying a multiplier to the statutory payment of up to 2.46. This methodology has been adopted as it takes advantage of using a statutorily approved mechanism for recognising length of service and age. Appendix A sets out a comparison of various multiplier options (1, 1.5, 2 and 2.46) and the Council's current policy of added years.

4.2.5 A multiplier of 2.16 would result in a 'breakeven' situation; and anything less results in an overall saving to the Council. (Note: table A consists of redundancies occurring over the last 4 years and has been used as a representative 'basket' of redundancies to quantify the overall financial consequences of a revised mechanism). **Members are requested to consider the most appropriate mechanism to replace the 'added years' policy. Appendix C sets out a summary of the multiplier set by a sample of other authorities in the South West.**

4.2.6 In addition the employer has the option to allow the redundant employee to choose to convert the compensatory element of the pay into a period of membership in the Local Government Pension Scheme. Members should be

aware that in cases where employees will have access to their pension, the strain cost to the Council is payable immediately. **Members are asked to determine whether this option should be provided.**

4.2.7 If prior to the expiry of the employee's notice of dismissal an individual accepts an offer of employment with a related employer (in accordance with the Redundancy Payments Continuity of Employment in Local Government Modification Order 1999) to start immediately or within four weeks of the end of the previous employment, they will be regarded as redeployed, not redundant and no redundancy payment can be made.

### 4.3 Interests of Efficiency

4.3.1 Arrangements to terminate employment "in the interests of efficiency" provides the Council with the flexibility to achieve efficiency improvements through a mutually agreed termination.

4.3.2 The Council can use this provision where opportunities for savings have been identified through a reallocation of duties, although the volume of work to be undertaken has not diminished, or where it would help to replace the post-holder with someone better suited to cope with the changing requirements of the work.

4.3.3 To satisfy 'Interest of Efficiency' grounds it is a requirement that there should be organisation change resulting in an improvement in service delivery and a reduction in costs.

4.3.4 To compensate employees whose employment is terminated in the Interests of Efficiency, the Council will make a compensatory payment.

4.3.5 It is suggested that any such payment be calculated using the statutory redundancy tables applying a multiplier mechanism, and that as in the case of redundancy, **Members consider the multiplier to be used and whether the option is given to the employee to convert the payment into a period of membership in the Local Government Pension Scheme.**

4.3.6 **Members should also consider whether payments will continue to be calculated on the basis of actual salary, in common with other Authorities.**

## 5 RISK ASSESSMENT

Risk	Mitigation
When formulating a new policy the Council must be satisfied that the Policy is workable, affordable and reasonable, having regard to foreseeable cost.	The development of this Policy has been in consultation with the Strategic Director of Resources. The financial consequences of the options for a new compensation policy have been considered and set out in Appendix A.
Without a clear policy the Council could face challenges of unfair dismissal by reason of redundancy.	The Council has a full and 'live' Corporate Equality Scheme and this Policy adopts a standard formulae.
The Council is currently not operating within the Local Government (early Termination of Employment)	This Policy covers the Council's duty to formulate and publish a written Policy in relation to the exercise of its

(Discretionary Compensation) Regulations 2006	discretionary powers.
The calculation for payment in the termination in the Interest of Efficiency is based on age and length of service which is challengeable under the Age Discrimination Legislation	Interest of Efficiency is loosely based on a redundancy and redundancy payments are based on the DTI table calculated on age and length of service. Case law will be reviewed as it emerges.

## Conclusion

The Council has a duty to act in accordance with employment legislation and good practice and to act with fairness, equity and transparency. This Policy enables the Council to comply with these principles. As detailed in this report Members are requested:

1. to consider whether the pay used in calculating the Statutory redundancy pay should continue to be the actual weeks pay in common with other authorities;
2. to consider the most appropriate mechanism to replace the 'added years' policy in the event of redundancy or termination on the grounds of interest and efficiency; and
3. to determine whether the option to allow the employee to choose to convert the compensatory element of the pay into a period of membership in the Local Government Pension Scheme should be provided.

Jan Montague  
Acting Head of Personnel of Payroll

Personnel Panel  
6 September 2007

Mark Seymour  
Strategic Director (Resources)

## Background Papers:

The Current Policy for the Management of Redundancy is available if required.