

COMMITTEE: Human Resources Committee	DATE: 21 st December 2006	CLASSIFICATION: Unrestricted	REPORT NO.	AGENDA NO. 4.1
REPORT OF: Director of Resources		TITLE: Changes to the Discretionary Payments for Loss of Employment Scheme		
ORIGINATING OFFICER(S): Martin Smith, Director of Resources		Ward(s) affected: N/A		

1. SUMMARY

- 1.1 In addition to statutory redundancy pay, current Council policy provides for discretionary compensation payments on redundancy determined by the age and length of service of the relevant individuals.
- 1.2 For employees who are in the Local Government Pension Scheme (LGPS) and are aged over 50 the discretion normally takes the form of an enhancement to their pension commonly referred to as 'added years'. For other employees the discretion is exercised through the payment of an enhanced redundancy payment.
- 1.3 The Department for Communities and Local Government (DCLG) has been considering the implications of the Employment and Equality Age Regulations (2006) on the operation of the LGPS.
- 1.4 This review process concluded that the award of added years when an employee is made redundant or retired in the interest of the efficiency of the service is incompatible with the legislation, on the basis that the payment of such benefits is restricted to employees aged 50 or over.
- 1.5 The DCLG consulted on draft Regulations which proposed to discontinue the practice of paying added years on redundancy or retirement in the interests of the efficiency of the service from 1st October 2006. The draft Regulations replaced this with the discretion to pay compensation of up to two years pay (including redundancy pay) for all employees whose employment is terminated in these circumstances.

- 1.6 Following representations from business concerning the limited time to implement the new arrangements, the Government deferred application of the Age Discrimination Regulations to pension schemes generally until 1st December 2006. DCLG has now issued new Regulations relating to the Local Government Pension Scheme which came into force on 29th November 2006.
- 1.7 The new Regulations are largely unchanged from the earlier draft, but include transitional provisions so that employers can use either the old Regulations or the new Regulations for redundancies between 1st October 2006 and 31st March 2007, provided the employment is terminated by 31st March 2007 (the latest date allowed under the regulations).
- 1.8 In the light of the new statutory requirements, the new Age Discrimination legislation, and the affordability of the current scheme, officers have developed a new discretionary payment scheme for consideration by the Committee.
- 1.9 Within these parameters it is proposed that the Council adopts a discretionary compensation scheme which provides for payments to employees to be based on:-
- A multiplier of the statutory redundancy scheme which would continue to relate the total payment to both age and length of service;
 - A maximum payment (including statutory redundancy) of 66 weeks pay; and
 - Provides a facility to enable individuals to elect to convert the discretionary element of their compensation package into added years at an actuarially determined rate. The existing facility to enable Councils to pay added years under the Local Government Pension Scheme (LGPS) augmentation arrangements are unaffected by the new legislation. This discretion has not been adopted by the Council. No changes are recommended except that individuals are given the option to convert benefits into added years for this purpose only.

2. RECOMMENDATIONS

The Committee is recommended to:-

- 2.1 Adopt the following Policy on Discretionary Compensation for Loss of Employment:-
- 2.1.1 Where an individual's employment is terminated by reason of redundancy or in the interests of the efficiency of the service, to award discretionary compensation based on 120% of statutory redundancy pay such that the maximum payment (including statutory redundancy) is 66 weeks pay.

2.1.2 Provide a facility to enable relevant employees to convert the discretionary element of their benefits into added years at a rate corresponding to that determined by the actuary by adopting the augmentation provisions of the Local Government Pension Scheme for this purpose only.

2.2 Agree that:

2.2.1 Where, at the date of publication of the proposed policy (16th November 2006) formal consultation with staff on proposed restructuring has commenced, then any consequent awards of discretionary redundancy compensation should be based on the existing policy; provided the employment is terminated by 31st March 2007 (the latest date allowed under the regulations).

2.2.2 All other awards of discretionary redundancy compensation are based on the new policy as agreed by the Committee.

LOCAL GOVERNMENT ACT, 2000 (SECTION 97)

LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF THIS REPORT

Brief description of "background papers"

Name and telephone number of holder
And address where open to inspection

Compensation Legislation

Lorraine Pitt Ext. 4362
Mulberry Place, 2nd Floor.

3. BACKGROUND

- 3.1 The Department for Communities and Local Government (DCLG) has been considering the implications of the Employment and Equality Age Regulations (2006) on the operation of the Local Government Pension Scheme (LGPS).
- 3.2 This review process concluded that the award of added years when an employee is made redundant or retired in the interest of the efficiency of the service is incompatible with the legislation, on the basis that the payment of such benefits is restricted to employees aged 50 or over.
- 3.3 The DCLG consulted on draft Regulations which proposed to discontinue the practice of paying added years on redundancy or retirement in the interests of the efficiency of the service from 1st October 2006. The draft Regulations replaced this with the discretion to pay compensation of up to two years pay (including redundancy pay) for all employees whose employment is terminated in these circumstances.
- 3.4 Following representations from business concerning the limited time to implement the new arrangements, the Government deferred application of the Age Discrimination Regulations to pension schemes generally until 1st December 2006. DCLG has now issued new Regulations relating to the Local Government Pension Scheme which came into force on 29th November 2006.
- 3.5 The new Regulations are largely unchanged from the earlier draft, but include transitional provisions so that employers can use either the old Regulations or the new Regulations for redundancies between 1st October 2006 and 31st March 2007.

4. CURRENT COMPENSATION ARRANGEMENTS FOR REDUNDANT EMPLOYEES

- 4.1 In addition to statutory redundancy pay, current Council policy provides for discretionary compensation payments to redundant employees determined by the age and length of service of the relevant individuals.
- 4.2 Employees aged 50 and over who are also members of the Local Government Pension Scheme (LGPS) and whose employment is terminated by reason of redundancy or in the interests of the efficiency of the service are entitled by law to early retirement and immediate payment of their pension.

4.3 The Council has adopted the discretion to enhance these pension payments by the award of 'added years'. The award is currently made on the basis of the matrix as set out in table 1. This relates the award to the length of reckonable service. It should be noted that the matrix is purely advisory and added years must be awarded on an individual basis. The matrix ensures that there is consistency between individual awards.

Table 1: Added Years Matrix

Reckonable Service	Added Years
Over 30 years	6 2/3rds
20 – 30	6
17 – 19	5
14 – 16	4
11 – 13	3
7 – 10	2
5 – 6	1

4.4 The benefits payable to employees aged 50 and over for the period 2004 to 2006 are set out in table 2:

Table 2: Payments to Individuals Aged 50 and Over 2004 to 2006

Number	43	
	Total Cost £	Average £
Statutory		
Early Retirement Costs	2,401,786	55,855
Redundancy	686,480	15,965
Sub Total: Statutory	3,088,266	71,820
Discretionary		
Added Years	1,865,640	43,387
Total Cost	£4,953,906	£115,207

4.5 The table indicates that relevant employees received benefits with a total capital value of £4.954 million in the period comprising statutory payments of £3.088 million and discretionary benefits of £1.866 million.

4.6 Employees aged less than 50 who are made redundant are not entitled to early retirement under the LGPS but have their entitlements deferred until they can be accessed at their normal retirement age.

4.7 The Council has discretion to provide a discretionary severance payment of up to 66 weeks pay to these individuals (or to employees who are not members of the pension scheme). The awards must be considered on an individual basis and reflect an assessment of the period the individual might be unemployed. The current average award represents 112% of statutory redundancy pay which equates to an average of 13½ weeks pay.

4.8 The cost of the compensation packages awarded to employees aged under 50 over the last two years is set out in table 3. The table indicates that relevant employees received benefits with a total value of £0.847 million in the period comprising statutory payments of £0.398 million and discretionary benefits of £0.449 million.

Table 3: Payments to Individuals under 50 2004 to 2006

Number	30	
	Total Cost £	Average £
Statutory Payments		
Redundancy	397,978	13,266
Discretionary Payments		
Severance	449,100	14,970
Total cost	<u>£847,078</u>	<u>£28,236</u>

- 4.9 The Age Regulations stipulates that age discrimination occurs where an individual is treated less favourably than another on the grounds of their age. The provisions of the Regulations do not apply to the statutory redundancy scheme only the discretionary elements.
- 4.10 To comply with the Regulations the capital value of the added years compensation package should broadly correspond to the value of the severance package.
- 4.11 Table 4 sets out the benefits receivable for two individuals the circumstances of which are identical with the exception of age. The table indicates that the added years' package which is restricted to employees aged 50 and over has a capital value 4 times greater than that of the severance package available to younger employees. Because of this differential the current discretionary compensation scheme is potentially discriminatory. The DCLG therefore announced its intention to remove the discretion to award 'added years' and replace it with the discretion to pay compensation of up to two years pay (including statutory redundancy pay) regardless of age.

Table 4: Discretionary elements of Compensation Package

	49	50
Employee Age	49	50
Employee Pay	35,297	35,297
Employee Service	20	20
	Benefits at Age 49	Benefits at Age 50
	£	£
Added years		67,374
Severance	16,878	
Sub total Discretionary	<u>16,878</u>	<u>67,374</u>
Difference £		+50,496
Difference %		+300%

5. AFFORDABILITY

- 5.1 The Council's Medium Term Financial Plan projects significant financial constraints on revenue and capital budgets over the medium term. In addition the Pension Fund is also subject to increasing financial pressures resulting from increasing life expectancy and relatively lower investment returns.

5.2 In previous years it has been the practice to fund redundancy and severance costs from capital receipts. This requires annual approval by the Government on application by the Council. The scope to use this funding mechanism will be limited in the future because of:-

- Reduced availability of capital receipts.
- New Government arrangements which indicate that the level of approvals for capitalisation directions will be limited based on national quotas.

As a consequence costs arising from redundancy will impact more directly on the Council's revenue budget than has been evident in recent years.

5.3 The financial context set out above needs to be taken into account in establishing a discretionary compensation scheme, with the interests of Council taxpayers considered alongside fair and equitable treatment of staff.

5.4 However, given the projected financial outlook the current scheme is unlikely to remain affordable over the medium term.

6. PROPOSED SCHEME

6.1 Development of the proposed scheme has taken into account the statutory requirement for the Council to:-

- Have regard to the extent to which the exercise of discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service; and
- Be satisfied that the policy is workable, affordable and reasonable and having regard to the foreseeable costs.

6.2 The current scheme relates the level of compensation to length of Local Government service. This reflects the dual purpose of the payment to compensate for loss of employment and recognises public sector service.

6.3 It is proposed to continue this graduated approach to the award of compensation by basing discretionary compensation on the statutory redundancy scheme which uses age and length of continuous service to determine the level of payment i.e. ½ a week's pay for service under the age of 22, one week's pay for service between the age's of 22 and 41, and 1½ week's pay for service over the age of 41. The Age Discrimination Regulations specifically allow employers to relate discretionary compensation to age and length of service provided this is calculated as a multiplier of the statutory payment. The Regulations permit to make payment from day one and it is proposed to continue to make payment from two years service in accordance with the statutory redundancy scheme. Given the fact that the Government has retained age and length of service as criteria for awarding a redundancy payment the use of these criteria is capable of objective justification.

6.4 As stated in paragraph 4.7 the current discretionary payment to staff under age 50 equates, on average, to 112% of the statutory payment. Taking

account of the affordability issues set in section 5 of this report it is proposed to adopt a policy that would provide for discretionary compensation to be based on 120% of the statutory payment.

- 6.5 This would mean the maximum payment (including statutory redundancy) to an individual would be 66 weeks pay. This is the current maximum allowed under existing regulations, but less than the maximum of 104 weeks allowed in the new Regulations. Appendix 1 provides examples of the total compensation that would be paid to employees under the current and proposed arrangements. In general, the proposed scheme would be more generous for employees under 50, and less generous for employees over 50 who are also in the pension scheme. The latter group of staff, would of course, retain the additional and not insignificant benefit of immediate payment of pension. This is illustrated by examples set out in the following table which show the total payments (statutory and discretionary) under the current and proposed schemes:-

Employee Age	40	50
Length of service	20 years	20 years
Salary	£30,000	£30,000

Current Scheme		
One off payment	£23,334	£43,385
Annual pension	-	£9,750

Proposed Scheme		
One off payment	£24,115	£53,596
Annual pension	-	£7,500

- 6.6 Applying the proposed compensation package to the retirements in 2004 to 2006 would have resulted results in savings of £1.1 million accruing to the Council. The derivation of these savings is set out below:-

Comparison of Alternative Discretionary Compensation Scheme

	Employees aged 50 and over	Employees aged under 50	Total
Current scheme	1,865,640	446,600	2,312,240
Proposed scheme	694,443	473,410	1,167,853
Net (saving)/cost	1,171,197	(26,810)	(1,144,387)

7. CONVERSION OF DISCRETIONARY PAYMENTS INTO ADDED YEARS

- 7.1 It is further proposed that individual employees be given the choice of either taking the discretionary compensation as a one off payment or converting this into additional pensionable service at an actuarially determined rate to ensure the conversion is cost neutral for the Council.

- 7.2 This arrangement will enable the Council:-

- Continue to provide added years in a form compatible with the Age Regulations.

- Maximise choice for scheme members.

8. CONSULTATION WITH TRADES UNIONS

- 8.1 The proposed policy was published on 16th November 2006 and issued for consultation with the Trades Unions who were requested to respond and comment on the proposals by 14 December 2006. At the time of writing this report no comments have been received but should any subsequent issues be raised these will be reported to the Committee at the meeting.

9. IMPLEMENTATION ARRANGEMENTS

- 9.1 At any one time the Council will be undertaking a number of changes to staffing arrangements which will involve actual or potential redundancies. The process for managing these changes is governed by Corporate Human Resources policies on Handling Organisational Change which set out a number of key common steps including requirements for consultation with affected staff.

- 9.2 In order to ensure that there is consistent, unbiased and transparent implementation of the new policy it is recommended that:-

9.2.1 Where, at the date of publication of the proposed policy (16th November 2006) formal consultation with staff on proposed restructuring has commenced, then any consequent awards of discretionary redundancy compensation should be based on the existing policy; provided the employment is terminated by 31st March 2007 (the latest date allowed under the regulations).

9.2.2 All other awards of discretionary redundancy compensation are based on the new policy agreed by the Committee.

- 9.3 Under the new regulations the Council is required to formulate and keep under review a policy that applies in respect of exercising the Council's discretions referred to in this report.

- 9.4 If the Council decides to amend its policy a new statement of the amended policy must be published and may not come into effect until one month has elapsed since the date the policy was published.

10. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 10.1 The comments of the Director of Resources have been incorporated into the report.

11. RISK MANAGEMENT IMPLICATIONS

- 11.1 By implementing these revised proposals the organisation will have a scheme which is compliant with the Age Discrimination Regulations and is fair and transparent for all staff within the Council. This will enhance employee relations. The scheme is also affordable which will not put any added pressure on tax payers of the Borough.

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16. APPENDIX

16.1 Appendix 1: Total Compensation Payable on Current and Proposed Schemes (Based on Notional Salary of £30,000)

Age	Service	Impact on Individual						Cost to Council		
		Current		Proposed; 120.0% Option		Gain/ (loss)		Cost/ (Saving) :120.0% Option		
		Annual Pension	One Off Payment	Annual Pension	One Off Payment	Annual Pension	One Off Payment	Current	Proposed	Difference
20	2	-	852	-	1,269	-	417	852	1,269	417
25	5	-	3,407	-	5,077	-	1,670	3,407	5,077	1,670
30	5	-	5,413	-	6,346	-	933	5,413	6,346	933
30	10	-	10,419	-	11,423	-	1,004	10,419	11,423	1,004
35	5	-	5,393	-	6,346	-	953	5,393	6,346	953
35	10	-	11,656	-	12,692	-	1,036	11,656	12,692	1,036
35	15	-	16,676	-	17,769	-	1,093	16,676	17,769	1,093
40	5	-	5,690	-	6,346	-	656	5,690	6,346	656
40	10	-	12,038	-	12,692	-	654	12,038	12,692	654
40	15	-	18,526	-	19,038	-	512	18,526	19,038	512
40	20	-	23,334	-	24,115	-	781	23,334	24,115	781
45	5	-	7,763	-	8,885	-	1,122	7,763	8,885	1,122
45	10	-	14,504	-	15,231	-	727	14,504	15,231	727
45	15	-	21,206	-	21,577	-	371	21,206	21,577	371
45	20	-	28,164	-	27,923	-	(241)	28,164	27,923	(241)
50	5	2,250	11,077	1,875	15,144	(375)	4,067	28,081	23,729	(4,351)
50	10	4,500	21,865	3,750	29,654	(750)	7,788	73,159	64,110	(9,049)
50	15	6,750	31,500	5,625	41,625	(1,125)	10,125	88,191	73,060	(15,131)
50	20	9,750	43,385	7,500	53,596	(2,250)	10,212	181,658	141,357	(40,301)
50	25	11,625	49,010	9,375	59,221	(2,250)	10,212	148,450	108,149	(40,301)
50	30	13,750	55,384	11,250	64,846	(2,500)	9,462	360,953	314,296	(46,657)
55	5	2,250	11,077	1,875	15,144	(375)	4,067	30,803	26,991	(3,812)
55	10	4,500	22,154	3,750	30,288	(750)	8,135	51,507	43,882	(7,625)
55	15	6,750	32,942	5,625	44,798	(1,125)	11,856	82,327	70,544	(11,783)
55	20	9,750	44,827	7,500	56,769	(2,250)	11,942	171,620	136,284	(35,336)
55	25	11,625	50,452	9,375	62,394	(2,250)	11,942	109,801	74,465	(35,336)
55	30	13,750	56,826	11,250	68,019	(2,500)	11,193	120,855	79,523	(41,333)
55	35	15,000	60,577	13,125	73,644	(1,875)	13,067	105,854	79,523	(26,331)
60	5	2,250	11,077	1,875	15,144	(375)	4,067	15,075	12,002	(3,073)
60	10	4,500	22,154	3,750	30,288	(750)	8,135	40,641	34,495	(6,146)
60	15	6,750	33,231	5,625	45,433	(1,125)	12,202	57,891	48,672	(9,219)
60	20	9,375	45,144	7,500	59,942	(1,875)	14,798	87,101	66,197	(20,903)
60	25	11,250	50,769	9,375	65,567	(1,875)	14,798	66,755	45,851	(20,903)
60	30	13,125	56,394	11,250	71,192	(1,875)	14,798	77,399	56,496	(20,903)
60	35	15,000	62,019	13,125	76,817	(1,875)	14,798	77,399	56,496	(20,903)
60	40	15,000	62,019	15,000	82,442	-	20,423	36,072	56,496	20,423

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