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| Committee: HR Committee | Date: 15 th September 2014 | Classification: | Report No: | Agenda Item: |
| Report of: Stephen Halsey, Head of Paid Service Other Officers: Mark Keeble Project Manager, Employment Options | | Title: Employment Options Savings Programme Wards Affected: All | | |

1. **SUMMARY**

- 1.1 This report provides information on the introduction of a programme of early retirement, voluntary redundancy and flexible working options across the council, named the Employment Options Savings Programme as part of the Council's response to the Government's Austerity Programme.
- 2.1 The programme contains two streams. The first stream relates to a number of potential service reorganisations that have been identified as potential workforce efficiency opportunities; expressions of interest received from these service areas will inform the development of these reorganisations, which will be undertaken through the Handling Organisational Change Procedure. The second stream relates to all other employees. This report addresses the process for progressing requests within the second stream.

2. **RECOMMENDATIONS**

- 2.2 The HR committee are requested to note the Employment Options Savings Programme and the next steps in the progression of this scheme.

3. **BACKGROUND**

- 3.1 The financial statement reported at the July Cabinet meeting highlighted the following:

During the three financial years from 2011/12 to 2013/14 the Council has successfully delivered savings in the region of £25m each year to ensure it has a balanced budget. Fiscal consolidation at a national level through deficit reduction policies (austerity) is set to continue for the foreseeable future and the estimated savings requirement in 2015/16 and beyond, even after planned use of general reserves, is expected to be significantly higher with £28m forecast for 2015/16 and up to £40m per year thereafter.

- 3.2 This significant challenge can be achieved, in part, by a reduction in the size of the council's workforce. The Head of Paid Service is committed, wherever possible, to accomplishing this task without compulsory redundancies for employees.

4. EMPLOYMENT OPTIONS SAVINGS PROGRAMME

- 4.1 From 28th July, 2014, all employees (excluding Schools staff) were offered the opportunity to express an interest in any of the following options, to take effect from 2015/16. Employees were also able to express an interest for these options in either of the following two financial years in order to inform future workforce planning. No decision will be made on future years at this stage, these requests will be used to inform service planning only.

- voluntary redundancy (including early retirement benefits for any employee who is a member of the pension scheme and aged 55 or over on their last day of service);
- flexible retirement for those employees aged 55 and over who are members of the pension scheme; and
- flexible working for employees who want to reduce their working hours e.g. to job share, other part-time hours or term time only working.

- 4.2 Requests for flexible retirement and flexible working are based on existing policies that are already in operation across the Council. The programme takes these policies into account.

- 4.3 The council's People Board has agreed that employees will only be granted voluntary redundancy or early retirement where detailed criteria has been met and where it can be demonstrated that:-

- genuine savings can be made; **and**
- release does not significantly compromise service delivery / operational viability; **and**
- The impact on remaining staff has been assessed and minimised.

- 4.4 It is extremely unlikely that every request received from employees will be agreed, particularly from those who work in areas of skills shortages, recruitment or retention difficulties and areas that directly deliver the council's strategic priorities. Services will still need to be delivered to the community, but consideration will be given as to how these can be delivered more efficiently, through innovation and change.

- 4.5 Employees working in roles in traded, income generating or grant funded services are also extremely unlikely to be released, unless they provide a 'bumped' redundancy opportunity. Bumped redundancies are situations where an employee at risk of compulsory redundancy is redeployed into the job of an employee whose job is not at risk, but who would like to take voluntary redundancy or early retirement. This will only be allowed if the employee at risk of compulsory redundancy has the relevant transferable skills for the job – so staff working in specialised roles will have limited scope to pursue this option.
- 4.6 Detailed information for employees has been made available on the intranet. A telephone hotline and email address is in operation for employees or managers to raise queries or concerns regarding the scheme and drop in sessions have been held for employees to discuss pension issues or flexible working options.
- 4.7 The deadline for expressions of interest was Friday 22nd August. Term time only employees who were not able to submit a request by this deadline were able to express an interest within one week of returning to work following their summer break.
- 4.8 The programme has been designed in accordance with Legal advice sought during the development of the scheme. This legal advice is reflected in Section 10 of this report.

5. DECISION MAKING PROCESS

- 5.1 A summary of the criteria for releasing staff on voluntary redundancy and early retirement is attached at Appendix 1.
- 5.2 Directorate Management Teams are currently reviewing all expressions of interest requested to take place before 31st March 2015 and will recommend outcomes to the People Board, where final decisions will be made in early October. No decisions will be made on future requests at this time.
- 5.3 Following People Board decisions Trade Unions will be provided with a list of posts that will be deleted outside of a formal restructure and the service/structural adaptations that managers will make in order to accommodate the deletion with minimal impact to remaining employees. Trade Unions will have a period of two weeks to review these decision and make representations, where appropriate. An extension to this period might be granted by People Board in exceptional circumstances. These representations will be reviewed by the People Board, who will determine the appropriate course of action.

- 5.4 Additional reorganisations may be identified as a result of a number of expressions of interest. If this is the case, as with the reorganisations currently identified, any additional restructures will be undertaken in accordance with the Handling Organisational Change policy.
- 5.5 Employees who's expressions of interest have not been supported will have the opportunity to request a written review. This will be a paper based review of the decision and will be undertaken by the People Board Review Panel – a time limited body that will operate with the specific remit of hearing written reviews. A Trade Union representative will form part of this panel to ensure transparency in the review process.
- 5.6 In accordance with the Constitution, decisions relating to the redundancy of Service Heads and Directors will be taken by HR Committee. Should this situation arise a special meeting of HR Committee may be convened for this purpose. The Council's Pay Policy also requires details of the redundancy package to be provided to HR Committee when making such a decision. Any review of Service Head positions would require high level structural changes, which the Head of Paid Service will need to consider. Should any flexible retirement requests be received at Service Head level or above, the Head of Paid Service has indicated that this Committee should be informed in advance of them being accepted. Flexible Retirement decisions are delegated to the Head of Paid Service and do not require HR Committee approval, however, it is consider appropriate to inform the Committee when considering the wider implications for postholders and positions at this level.

6. SUMMARY OF EXPRESSIONS OF INTEREST

- 6.1 775 expressions of interest for Employment Options have been received in total. The table below shows the number of requests received in each year for each option:

Table 1: Summary of Employment Options Request

| Expressions of Interest | Flexible Retirement | Reduced Hours | Term time working | Voluntary redundancy | Grand Total |
|--|----------------------------|----------------------|--------------------------|-----------------------------|--------------------|
| Before 31 March 2015 | 11 | 13 | 9 | 477 | 510 |
| Between 1 April 2015 And 31 March 2016 | 3 | 8 | 8 | 102 | 121 |
| Between 1 April 2016 And 31 March 2017 | 5 | 10 | 3 | 126 | 144 |
| Grand Total | 19 | 31 | 20 | 705 | 775 |

6.2 The table below shows the number of expressions of interest per directorate as a count of FTE (full time equivalent) posts. The data highlights the percentage of expressions of interest received against the FTE count within each directorate:

6.3 A thorough process is currently being undertaken within each directorate to assess the impact of each request on service delivery.

Table 2: Employment Options Requests by Directorate for Requests for Before 31 March 2015

| Directorate | Total no. FTE on the establishment | Total no. FTE requests | % requests of total FTE count | Total no. FTE requests to implement before April 2015 | % requests for 2015 of total FTE count |
|-------------|------------------------------------|------------------------|-------------------------------|---|--|
| CLC | 929 | 167 | 18.0% | 132 | 14.2% |
| D&R | 458 | 112 | 24.5% | 68 | 14.8% |
| ESCW | 1912 | 342 | 17.9% | 214 | 11.2% |
| LPG | 147 | 24 | 16.3% | 20 | 13.6% |
| RES | 467 | 113 | 24.2% | 68 | 14.6% |

7 PROBITY AND CONFLICTS OF INTEREST

7.1 The Employment Options Savings Programme is open to all council employees and, therefore, creates the potential for conflicts of interest to arise between decision makers and employees submitting a request. This, in part, is discussed within the Legal comments contained in section 10 of this report, which focuses on the decision to implement the scheme that, in turn, could have potentially benefited members of the decision making body. Legal advice confirmed that staffing decisions are delegated to the Head of Paid Service. However, any appointment and dismissal decisions, including redundancy, for chief and deputy chief officers (members of CMT and Service Heads), are reserved for HR Committee only. Therefore, the key decision makers cannot decide to make their own posts redundant and hence any flexible retirement arrangements proposed for these officers will also be reported.

7.2 Further Legal and Audit advice has been sought to determine how Directorate recommendations and People Board decisions should be taken where one of the decision makers has a personal relationship with the employee making the request. Legal advice has confirmed that Service Heads and above (those responsible for agreeing directorate recommendations and final decisions through the People Board) should complete a declaration of interest to identify any personal relationships with colleagues within the council. Where an interest has been declared the decision maker must remove themselves from the room whilst the request is discussed. The minutes of the meeting should reflect this removal.

- 7.3 These measures should mitigate any conflicts of interest and ensure the probity of the programme.

8. NEXT STEPS

- 8.1 Decisions will be communicated to individual employees in October. Employees who leave the organisation through redundancy will be required to sign a settlement agreement, for which independent Legal advice will be provided by an external agency. Departure dates will be determined between managers and employees and it is anticipated that the majority of staff will exit the organisation between January and March 2015.
- 8.2 Analysis will be undertaken to identify the financial, equalities and structural impact of the programme on the council's workforce. This will be presented to the HR Committee for comment at a future meeting.

9. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 9.1 This is a noting report updating the HR Committee on the Employment Options Savings Programme. There are no direct financial implications arising from the recommendations within this report.
- 9.2 However, there are significant costs and savings associated with the programme and these will need to be approved through the normal financial approval process governed by the budget and policy framework.

10. LEGAL COMMENTS

- 10.1 Staffing is a non-executive function by virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. All staffing matters up to Chief and Deputy Chief Officer (broadly up to Service Head level) are delegated to the Head of Paid Service (see paragraph 3.1.1.11 and item 37 of the Constitution at page 78). The Head of Paid Service has power to implement an ER/VR programme for the staff within his remit if he decides that is an appropriate way to achieve the savings required by the Executive. By virtue of the corporate scheme of delegation ER/VR is delegated on to Directors and Heads of Service (see paragraph 6.5 on page 126). However, Chief and Deputy Chief Officer posts (those referred to in Item 37 as being appointments reserved to the Appointments Sub-Committee) are not delegated to officers.

- 10.2 The HR Committee has delegated power from Council to establish sub-committees to deal with the dismissal of statutory and non-statutory chief officers and deputy chief officers in accordance with the Officer Employment Procedure Rules. To this extent, the HR Committee has an interest in the top level of the Employment Options Programme.
- 10.3 As a constitutional issue, the Head of Paid Service can exercise his delegated power up to Service head level and the HR Committee can exercise its own delegated power beyond that. As the scheme will be the same in both cases and there are interdependencies between the levels, it may be appropriate for the Committee approve the entire scheme.
- 10.4 As the HR Committee is responsible for establishing a sub committee to consider any proposal to dismiss the Head of Paid Service or a statutory or non-statutory chief/deputy chief officer, they will become involved in this process should any of the service restructures, deletions of posts outside of a formal restructure and bumped redundancies include a proposal to dismiss staff at these levels. It is expected that information on relevant savings proposals will be provided to the Committee in future reports.
- 10.5 Insofar as the Committee has the responsibility to determine major policy on the terms and conditions on which staff hold office within allocated resources, this report is for noting only in respect of the possible impact on such policies of a significant reduction in staff numbers.
- 10.6 Decisions on specific budget savings proposals to deliver the MTFP are an executive function which will require approval from Cabinet to pursue. Once Cabinet decisions are made it is for the Head of Paid Service to agree any structural changes and any dismissals due to either compulsory or voluntary redundancy that result (with the exception of those involving chief and deputy chief officers which must be referred to HR Committee). HR Committee have a standing request for quarterly reports on starters and leavers. The impact of the savings programme on staff leaving the Council will therefore be reported to HR Committee through regular reporting.
- 10.7 Cabinet can decide on a strategy of delivering budget savings with an aim of there being no compulsory redundancies or directing the Head of Paid Service to take all reasonable measures to avoid them. The extent to which Cabinet can consider staffing issues within specific budget proposals is limited to the general duty of local authorities to have due regard to the need to eliminate discrimination under the Equality Act 2010.

- 10.8 The Constitution also allows for elected members to participate in dispute resolution through the Joint Consultative Advisory Group (JCAG). A number of previous restructures have been referred to JCAG when Trade Unions have registered a failure to agree following consultation on organisational change. However, JCAG has no decision making powers but makes recommendations to the Head of Paid Service.
- 10.9 There are established procedures for dealing with Flexible Working, Flexible Retirement and Premature Retirement requests from staff. All decisions on these matters are delegated to officers and do not require any involvement of Elected Members.

Decisions on VR/ER outside of formal restructures

- 10.10 Custom and practice within the Council is for all redundancies to take place in line with the Procedure for Handling Organisational Change. Within the context of a VR/ER scheme it is permissible for employees to be considered redundant without recourse to this procedure provided:
- There is a genuine redundancy situation i.e. the Council's requirement for employees to carry out work of a particular kind has ceased or diminished;
 - There is no suitable alternative work available within the Council;
 - There is an opportunity to avoid another employee being made compulsorily redundant i.e. a bumped redundancy; and,
 - There are no changes required to the job descriptions or terms and conditions of other employees as a result of accepting the request.
- 10.11 The process to be adopted by the Council will require consultation with Trade Unions prior to being finalised. It will need to ensure the impact on those employees that remain are given appropriate consideration e.g. in terms of managing workloads.

Conflicts of Interest

- 10.12 There is potential for senior officers involved in making decisions on restructures to be present at meetings at which a request that involves them personally may be discussed and decision taken. Senior officers chairing meetings such as DMT, Directorate People Panels and People Boards will need to be alert to potential conflicts of interest, ask for them to be declared and recorded. When a conflict of interest is declared, the officer will take no part in the discussions or decision in matters that involve them personally. It will be the responsibility of the chair to decide whether individual officers need to be excluded from all or part of any meetings.

- 10.13 As a scheme for Directors/Service Heads needs HR Committee approval, it is not possible for such an officer to benefit from the scheme in which that officer played a part as a decision maker.

Duty to Consult with Service Users

- 10.14 The VR/ER programme itself does not require any service user consultation under the best value duty of a local authority under section 3 of the Local Government Act 1999. Neither does it require consultation under the Public Services (Social Value) Act 2012. Only decisions that change the way in which a function of the Council is delivered require service user consultation. Examples of functions are waste management, social care, registrars and planning. Reducing the number of staff or changing the structure of a team, job descriptions or the way in which work is organised are considered to be activities and require only formal consultation with employees and Trade Union Representatives.
- 10.15 Decisions on the VR/ER programme relate to a strategic approach to contribute to the Council's savings target. It is not part of the Council's "functions". This was confirmed in case of *R on the application of Maria Stella Nash v. Barnet London Borough Council [2013]* which established that Human Resources decisions of a local authority are "activities" of the Council not "functions".
- 10.16 Managers leading on specific Service Challenge proposals that will result in a change to how a function is delivered are responsible for identifying the specific consultation requirements with service users that must be undertaken.

Requirements to Consult with Employees and Trade Union Representatives

- 10.17 Under the Information and Consultation Directive, consultation with employees must be meaningful and effective. This means that consultation processes must provide an opportunity to receive constructive feedback and explore potential alternative options. Consultation must not be a *fait accompli*. Decisions requested from Cabinet on budget savings proposals are subject to consultation and any reports need to reflect this.
- 10.18 There is a legal duty under Section 188 Trade Union and Labour Relations (Consolidation) Act 1992, (TULRCA) for employers to collectively consult about redundancies in situations where it is proposed to dismiss 20 or more employees at one establishment over a period of 90 days or less. For the purposes of the Council, 'one establishment' is the employees working within central directorates, it does not include community or maintained schools.

- 10.19 The Council's position is expected to be that 100 or more employees will be made redundant. This requires that consultation commences at least 45 days before the first notice of redundancy is issued. The provisions of Section 188 do not distinguish between voluntary or compulsory redundancy so the Council. Therefore a letter will need to be sent from the Head of Paid Service to the Trade Unions and Secretary of State to meet the statutory requirement to inform them in writing. This letter was previously issued by the Council in 2010 ahead of formal consultation commencing on the Lean programme.
- 10.20 The Council's existing collective bargaining arrangements with Trade Unions and Procedure for Handling Organisational Change provide a framework for complying with specific requirements for both individual and collective consultation to take place.

Equality Act 2010

- 10.21 In agreeing to take forward the VR/ER scheme, there will need to be due regard to the impact of the proposed scheme on the equality between staff from different backgrounds. Any equality analysis, which outlines the outcome of the 2011/12 scheme, will identify groups likely to apply for ER / VR; this will be included in relevant reports.
- 10.22 It will be necessary to complete Equality Assessments (EA) in order to demonstrate that due regard has been taken to eliminate discrimination. This will require an EA of the programme itself before it is implemented and for any individual restructuring proposals which will need to be completed prior to starting consultation and updated once the outcome of the consultations is known. For staffing decisions e.g. on VR/ER etc., the outcome on employees and profile of their protected characteristics will be maintained for monitoring purposes. It is expected that a greater number of older employees (aged over 55) will request to take VR/ER. This is because employees in the pension scheme are entitled to early release of pension benefits if they are made redundant after reaching age 55.

Timescale of Programme

- 10.23 The approach of writing to employees to ask them to indicate whether they would be interested in VR/ER or other options available over the next 3 years is legitimate to inform the Council's planning to deliver savings whilst attempting to avoid compulsory redundancies. The initial letter to staff and their response does not form a binding commitment and this will be made clear in the correspondence.

10.24 No formal commitment should be given to staff beyond a 3 to 6 months period. Formally agreeing to staff leaving the organisation beyond this risks performance issues with individual employees who may lack the motivation to perform their duties knowing they are leaving. It also increases the risk that another employee will leave (through resignation or dismissal for sickness, disciplinary etc.) which allows a saving to be made by deleting a vacant post. The Council may also find it necessary to review redundancy payments in the future to manage the costs associated with changes in the workforce so long-term commitments should also be avoided for this reason. Therefore, binding commitments to staff must only be made for a 3 to 6 month period otherwise the Council risks breaching its general fiduciary duty.

11. ONE TOWER HAMLETS CONSIDERATIONS

11.1 An Equalities Assessment has been undertaken to identify the potential impact on the Council's workforce, in particular the impact on the Council's strategic aim to employ a workforce that reflects the community. Each stage of the change process will include an analysis of the equalities impact.

12. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

12.1 Not applicable.

13. RISK MANAGEMENT IMPLICATIONS

13.1 There are significant risks related to savings programme to ensure the Council has a balanced budget. These have been identified and are reflected in the main body of the report. Comprehensive guidance has been issued for managers that covers a broad range of factors. When developing the Employment Options Programme, managers from Internal Audit and Risk were consulted and their advice taken into account.

14. APPENDICES

Appendix 1 – Workforce Savings: Employment Options Scheme – Criteria for Releasing Staff on Voluntary Redundancy/Early Retirement

Local Government Act, 1972 Section 100D (As amended)
List of “Background Papers” used in the preparation of this report

| Brief description of “back ground papers” | Name and telephone number of holder and address where open to inspection. |
|---|--|
| RedundancyRights.gov.uk | Mark Keeble, Project Manager, Employment Options, 020 7364 2186 |
| Handling Organisational Change Procedure | Mark Keeble, Project Manager, Employment Options, 020 7364 2186 |
| Flexible Working and Flexible Retirement Procedures | Mark Keeble, Project Manager, Employment Options, 020 7364 2186 |