

<b>Committee/Meeting:</b> HR Committee	<b>Date:</b> 22 October 2014	<b>Classification:</b> Unrestricted	<b>Report No:</b>
<b>Report of:</b> Corporate Director (Resources)  <b>Originating officer(s)</b> Simon Kilbey, Service Head (Human Resources & Workforce Development)		<b>Title:</b>  <b>Pay Policy – Re-employment following redundancy/early retirement</b>  <b>Wards Affected:</b> All	

<b>Lead Member</b>	Cabinet Member for Resources
<b>Community Plan Theme</b>	All
<b>Strategic Priority</b>	Work efficiently and effectively as one Council

## 1. **SUMMARY**

- 1.1 Given the current Employment Options Programme and the upcoming Transformation process, HR Committee requested on 15<sup>th</sup> September 2014 a report on the period of time that an employee is prevented from taking up alternative employment with the Council.

## 2. **DECISIONS REQUIRED**

HR Committee is recommended to:-

- 2.1 Consider the information provided and decide which option, if any, they wish the Council to pursue

## 3. **REASONS FOR THE DECISIONS**

- 3.1 The report is provided as a result of a request for such information from the HR Committee.

## 4. **ALTERNATIVE OPTIONS**

- 4.1 The alternative options are covered in the report.

## **5. BACKGROUND**

- 5.1 Under section 38(1) of the Localism Act 2011, relevant authorities are required to produce an annual Pay Policy statement. The most recent guidance “Openness and accountability in local pay: Guidance under section 40 of the Localism Act” published in February 2012, sets out the key policy principles that underpin the pay accountability provisions in the Act.
- 5.2 The guidance states “It is essential that an authority’s approach to pay, as set out in a pay policy statement, is accessible for citizens and enables local taxpayers to take an informed view of whether local decisions on all aspects of remuneration are fair and make best use of public funds.”
- 5.3 Pay Policy statements “offer an opportunity to put data on pay and reward firmly within the context of the authorities agreed policies, and to provide the public with a clear justification of how their money is being used appropriately in the pay and reward of senior staff.” With this in mind, the Council must have consideration of not making redundancy payments unnecessarily and that proper prudence and governance arrangements are in place around such payments.
- 5.4 The Council’s 2014-2015 Pay Policy (Appendix 1) states the following with regards to re-employment following redundancy/early retirement:-  
“Any member of staff who has left the Council by reason of redundancy (compulsory or voluntary) or early retirement and received a severance payment is required to have a gap of at least one year after the date of termination before they can return either as a directly employed member of staff, an agency worker or a consultant.”
- 5.5 The Pay Policy also includes a current exemptions process as follows:-  
“To allow for exceptional circumstances, when it might be necessary to re-employ someone sooner than after a year’s gap, a Corporate Director, in conjunction with the Service Head HR and WD, and after consultation with the Chair of the Human Resources Committee, has authority to waive the one year requirement, provided there is justification.”
- 5.6 An example of where such an exemption may be applied is where a post is deleted due to the withdrawal of government funding. Then, at a later date, the funding is reinstated and it is a Council priority that this service is up and running quickly again and the ex-employee is best placed to achieve this. It is recommended that this exemption process is retained, regardless of the option pursued.
- 5.7 This requirement was added to the Pay Policy in 2013-2014 to try to prevent employees leaving by way of redundancy and then returning within a short period to work for the Council again, either as an employee, agency worker or consultant.

5.8 At the HR Committee on 12<sup>th</sup> March 2014, which considered the implementation of the 2014-2015 Pay Policy, there was a discussion about whether the gap should be raised to two years rather than one, but this was not adopted and it remained at one year.

## **6. BODY OF REPORT**

6.1 It is common practice for many organisations to enforce a break before an ex-employee can return to work for the same organisation. The break is used to ensure that redundancy payments are not being made unnecessarily. A redundancy payment is a compensatory payment for loss of employment and it is therefore appropriate that anyone receiving such a payment is prevented from returning to work for the same organisation without a break.

6.2 At the time the one year gap was introduced, there was much more of a mix between the type of redundancies that were taking place, with staff leaving the organisation through both compulsory and voluntary redundancy.

6.3 The average redundancy payment during the LEAN programme was circa £38,000 for a Council employee, which is close to an average years salary for the people who left due to redundancy during that period. Given this, a one year gap was thought appropriate at the time. It is timely to review whether the one year gap is still the most appropriate approach.

### **Benchmarking information**

6.6 Information has been gathered from other London Boroughs with regards to how (or if) they address this issue in their pay policies, to use as a basis for Tower Hamlets approach. The research found the following:-

- Newham Council – don't have a gap
- Greenwich – their pay policy only covers Chief Officers and in relation to those staff, a 2 year gap is required
- Hackney Council – require a 1 year gap for all staff
- Ealing Council – require a 6 month gap for all staff
- Enfield Council – require a 2 year gap for all staff

6.7 Further benchmarking research is being carried out.

6.8 Given the benchmarking information, there are a number of potential options that might be appropriate for Tower Hamlets, which are considered in more detail below:-

- Retain a one year gap for all staff
- Move to a two year gap for all staff
- Move to a differentiated gap based on reason for leaving
- Move to a differentiated gap based on pay grade

### **Option 1 - Retain a one year gap for all staff**

- 6.9 As stated above, the average redundancy payment during the LEAN programme was circa £38,000 for a Council employee, which is close to an average years salary for the people who left due to redundancy during that period.
- 6.10 However, with any redundancy payment, the first £30,000 is tax free and therefore in real terms the payment is higher than an average years salary. In addition, the maximum redundancy payment equates to 66 weeks (which is approximately 15 months). This means that any staff member who received a redundancy payment based on the maximum entitlement of 66 weeks could in effect return to employment before this period had passed.
- 6.11 Given this, for staff who leave due to voluntary redundancy, using a one year gap may not be appropriate. A one year gap may be appropriate for staff who leave due to compulsory redundancy however, but as identified above, the organisation strives to minimise all redundancies, particularly those that are compulsory.

### **Option 2 - Move to a two year gap for all staff**

- 6.12 Moving to a two year gap for all staff would address the matter highlighted above. As the maximum redundancy payment equates to 66 weeks (which is approximately 15 months), applying a two year gap would mean that no-one would be re-employed by the council during the period for which they were receiving compensation for loss of employment.
- 6.13 However, it needs to be considered whether this is appropriate in relation to staff who are compulsorily redundant, even though the number of staff in this situation is diminishing at present.

### **Option 3 - Move to a differentiated gap based on the reason for leaving**

- 6.14 Given the issues highlighted by the two options above, it may be that a differentiation is made between those who are made compulsorily redundant and those who volunteer.
- 6.15 If this principle is adopted, the time scales could be a one year gap for staff made compulsorily redundant and a two year gap for those who volunteer, or a one year gap and a three year gap, or other combinations as are felt appropriate.

### **Option 4 - Move to a differentiated gap based on pay grade**

- 6.16 In considering this option the Council would need to decide where to draw the line with regards to differentiation in relation to pay grade. This could be at Chief Officer level, in line with the approach of Greenwich Council.

- 6.17 This approach would differentiate between Chief Officers and other staff, so that staff at Chief Officer level (regardless of whether they leave due to voluntary or compulsory redundancy) have a gap of two years and all other staff (regardless of whether they leave due to voluntary or compulsory redundancy) have a gap of one year, or any other combination of years as appropriate.
- 6.18 This approach does not, however, address the issue with regards to whether it is appropriate that someone who leaves voluntarily has the same gap as someone who is made compulsorily redundant.

### **Controls**

- 6.19 There are controls in place, via People Board, to ensure that people won't return to work for the Council unless an exemption is agreed in line with the process set out in the current Pay Policy.

### **Changing the Pay Policy**

- 6.20 Should the HR Committee wish to change this requirement in the Pay Policy, there would need to be a consultation process with the Trade Unions and then the recommendation would have to go to Full Council for their approval. The change would be effective from the date of the Full Council decision.

## **7. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 7.1 This report presents HR Committee with a number of options with regards the length of gap before an existing employee leaving through voluntary or compulsory redundancy could seek re-employment within the Council.
- 7.2 The recommendations within this report do not lead to any additional financial commitments for the Authority.

## **8. CONCURRENT REPORT OF LEGAL SERVICES**

- 8.1 The Council will need to have regard to whether any amendment to the existing policy might have an adverse impact on any particular grouping of employees who might have the protection of the Equality Act 2010. An equality impact assessment should be able to identify any potential adverse impact. Any equality assessment undertaken will also need to consider the potentially disproportionate effect of the policy on part and fixed term employees as well as those employees with a protected characteristic.
- 8.2 One of the potential consequences of imposing a gap in service is that the Council can seek to recover the payment of the discretionary severance payment if the employee returns within the prescribed period. The Council will only be entitled to seek recovery of the severance payments where there is a contractual right to do so or where there is a statutory power which allows this.

- 8.3 The current statutory power in relation to recovery is contained within the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999 (as amended) which only requires repayment of redundancy payments if an employee commences work with a modification order body within one month of ceasing employment.
- 8.4 If recovery of the severance payment is to be considered this provision will need to be given contractual effect by either reference to the recovery provision in the employee's contract of employment or by reference to the provision within a relevant contractual policy which has been brought to the employee's attention.
- 8.5 Any proposed changes to the current provision will need to be consulted on and Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006) says that any amendment to the pay policy will not be enforceable until one month after the date of publication of the amended pay policy.
- 8.6 If repayment of the severance payment is to be sought it is further advised that the Council includes within any settlement agreement signed by exiting staff a clause which authorises the repayment of discretionary settlement within a defined period and the Council's ability to waive that requirement. This will ensure that any employee to whom the policy is applied will not be able to claim ignorance of its existence where the Council seeks to recover such sums.

## **9. ONE TOWER HAMLETS CONSIDERATIONS**

- 9.1 Should there be amendments to the pay policy, a further impact assessment will be needed.

## **10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 10.1 There are no implications.

## **11. RISK MANAGEMENT IMPLICATIONS**

- 11.1 There are no direct risks as a result of this report.

## **12. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 12.1 There are no implications.

## **13. EFFICIENCY STATEMENT**

- 13.1 No changes to service delivery or the use of resources are proposed.

**14. APPENDICES**

14.1 Tower Hamlets Pay Policy 2014 - 2015

**Local Government Act, 1972 Section 100D (As amended)  
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.
None	N/A