

# **Audit and Corporate Governance Committee Report**



Report of Head of Human Resources and Facilities

**AGENDA ITEM NO 3**

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## **Discretionary Payments Policy**

### **Recommendations**

1. That the Committee approves the discretionary payments policy (Appendix A) attached to this report.

### **Purpose of Report**

2. At its meeting of 22 February Full Council delegated this committee to consider

the draft discretionary payments policy. This is attached as an Appendix for

consideration.

### **Background**

3. Last year the Government published the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006.

These revoked the existing 2000 Discretionary Regulations, which provided for

additional years of pensionable service to be awarded in cases of redundancy and

efficiency early retirement to those of 50 years of age and over. As an alternative

the new regulations provide a discretion to award a lump sum payment for all age

groups. It also provides for transitional arrangements, available up to 31 March

this year. Added years of service can therefore still be applied to redundancies

and efficiency until this date. Similarly the provision to award added weeks of pay

for redundancy to those under 50 years of age will continue until then.

4. Each employer is required to produce a new policy statement relating to the exercise of its new discretionary powers, 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.

## **Statutory Redundancy Scheme**

5. The implementation of the new regulations coincides with changes to the statutory redundancy payment scheme. These changes are minimal, with the new scheme continuing to calculate continuous service up to the maximum of 20 years and a maximum payment of 30 weeks pay. It also provides for a statutory maximum weeks pay for calculation purposes of £ 310 per week.

## **Local Government Compensation Regulations**

6. The 2000 Regulations provided power to award discretionary payments to employees whose employment was terminated early, either on grounds of redundancy or efficiency.

7. These regulations in summary provided local authorities to:

- calculate a redundancy payment, (including the £310 per week maximum) based on a figure of the employees' actual week pay (ie the amount payable for a weeks work under the contract of employment in force on the termination date)
- pay lump sum compensation (depending on the employees' age and continuous service) of up to 66 weeks pay (this Council awarded this for those staff under 50 years of age)
- award added years of pensionable service to employees aged 50 or over (this Council awarded added years up to 6<sup>2</sup>/<sub>3</sub><sup>rds</sup> added years, depending on the merits of the case).

8. The Government, in revoking the 2000 Regulations, were mindful of the need to comply with the new law on age discrimination. As added years were only applicable to those aged 50 or over the previous Regulations are deemed unlawful.

9. The 2006 Regulations provide for:

- retention of the discretionary power to calculate a redundancy payment based on the actual weeks pay (this Council's current practice)
- a discretionary power to award a 'one-off' lump sum payment of up to 104 weeks pay, inclusive of any statutory redundancy payment
- removal of the power to award added years in redundancy and efficiency termination cases.

## **New Policy**

### **Redundancy**

10. The existing statutory maximum payable is 30 weeks pay. The new discretionary

power enables the Council to increase this up to a maximum of 104 weeks

(multiplier of 3.46 of the statutory maximum), depending on age and service. The

formula for calculating redundancy is deemed lawful. The Council is therefore

able to agree a multiplier that best fits its ability to pay and fairness to employees.

12. The Council currently calculates the statutory redundancy payment on the employees actual pay. The new policy would continue this provision. Based on previous experience and cost of compensation payments, a redundancy entitlement based on a multiplier of "x2" is deemed fair and equitable. The age and service matrix for this is attached in 'Appendix B'. This provides for a maximum payment based on 60 weeks pay, including the statutory element.

### **added years**

13. The Council will no longer be able to award added years to those redundant and retiring early on efficiency grounds. It could however award up to 6/23<sup>rds</sup> added years under Regulation 52 of the Local Government Pension Scheme (the Augmentation Provisions). This enables the Council to award added years to an employee prior to their employment being terminated. In effect this is only used as a recruitment or a retention aid, and due to its cost and other practicalities has not been used by this Council. In addition the use of this regulation may be challengeable under age and general discrimination legislation. The new policy therefore does not allow for added years being applied for 'augmentation' purposes.

14. Employees who are members of the Local Government Pension Scheme could be given the option of converting compensation lump sum payments into additional pensionable service. Due to the potential cost to the Council of paying a pension early, and the risk of legal challenge, this ability is not included in the draft policy.

### **efficiency**

15. The Council has traditionally made a distinction between redundancy and efficiency cases in respect of compensation. The legal protection provided by the Age Discrimination Regulations to redundancy does not apply to efficiency cases. (ie the use of the age and service matrix).

16. It is therefore recommended that in efficiency cases consideration should be given to making a one-off payment based on the merits of each individual case up to a maximum of 60 weeks pay, based on actual earnings. The draft policy makes reference to the criteria to be used when considering the merits of each case.

## **Financial Implications**

17. The new discretionary payments policy focuses compensation payments on one-off lump sums. This replaces the much longer term commitment of paying additional pension payments over the lifetime of the individual and their spouse. The redundancy matrix (Appendix B) using the multiplier of 'x 2' is deemed to be a fair and equitable settlement for redundancy compensation purposes, and as a maximum for considering efficiency retirement cases. Based on past comparators, the new lump sum payments will be no more costly in the longer term than the added years discretion.

## **Legal Implications**

18. Following removal of the 2000 regulations, the power to award compensation added years is no longer available after 31 March this year.

19. The new policy recognises the discretionary powers available to this Council under the 2006 regulations. Under the new regulations each employer must formulate and publish a new written policy statement in relation to the exercise of its discretionary powers. The existing arrangements for the awarding of added years can and will continue until 31 March 2007. The new scheme and policy will therefore be implemented on 1 April.

## **Human Resource Implications**

20. This draft policy has been formulated following consultation with Staff Forum, UNISON, and the staff concerned. Any comments made will be reported to the meeting.

## **Conclusion**

21. The draft policy has been formed as a result of changes to discretionary compensation regulations. Changes were brought about by age discrimination legislation, and the need for compensation payments to be seen fair and equitable to all staff. The attached policy (Appendix A) addresses these issues, and provides certainty to staff whose contracts are being terminated on redundancy or efficiency grounds.

## **Background Papers**

Local Government Pension Scheme Regulations 1997

The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2000

The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006