

REPORT TO COUNCIL

REPORT OF: Chief Executive

REPORT NO.: CEX353

DATE: 26th October 2006

TITLE:	Changes to Council Policies on Pensions and Compensation Payments.	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	N/A	
COUNCIL AIMS/PORTFOLIO HOLDER NAME AND DESIGNATION:	Councillor Frances Cartwright	
CORPORATE PRIORITY:	Use of Resources	
CRIME AND DISORDER IMPLICATIONS:	None	
FREEDOM OF INFORMATION ACT IMPLICATIONS:	None	
INITIAL EQUALITY IMPACT ASSESSMENT	Carried out and appended to report? Yes	Full impact assessment required? No
BACKGROUND PAPERS:	Previous report to Council CEX352	

1. Introduction

On the 1st of October new regulations came into force aimed at tackling age discrimination in employment.

One of the main effects of these regulations is to require a change in the way we calculate compensation payments to employees when posts are redundant.

As permitted by the previous regulations the Council calculates these payments using a formula which takes into account both age and length of service. The result is then multiplied by the employee's weekly pay with the maximum permissible compensation payment being based on 66 weeks. There was provision within the previous regulations to "cap" pay at the rate of £290 per week however the Council policy was not to apply this.

2. Recommendations

That Council approve the following changes to the Council's pension and compensation policies to take effect immediately:

- 1) That compensation payments for redundancy are calculated using the statutory scheme with a multiplier of 2.2 to actual salary, thereby limiting the maximum eligibility to 66 weeks. Consideration of any enhancement beyond the current 66 weeks up to the maximum discretionary allowable of 104 weeks would be considered on the grounds of compassion which is defined as "Situations of severe personal distress resulting from non-financial circumstances affecting the individual or close relative leading to unavoidable financial hardship".
- 2) That the compensation payments for redundancy continue at the statutory level, as at present, for those employees aged 50 and above whose redundancy effects a release of their pension.
- 3) That the Chief Executive is given delegated authority to determine whether the provisions relating to compassion should be applied.
- 4) That any retirements under the rule of 85 and regulation 31 that require the employer's consent are only acceded to where that particular application can be shown to the satisfaction of the Chief Executive to be in the interest of the efficiency of the service.
- 5) That any applications under section 26 of the regulations for early retirements on the grounds of efficiency are decided by the Chief Executive, with advice from the Monitoring Officer, Section 151 officer, and HR Manager on a case by case basis to ascertain whether they are in the interest of the efficiency of the service, with any appeal coming to a member panel.
- 6) In paragraphs 4) and 5) above, efficiency shall include (but not be limited to) both financial savings and/or quantifiable quality improvements judged on a case by case basis.

3. New Regulations on Compensation Payments

The new regulations, which came into effect on the 1st of October 2006, have a maximum permissible compensation of 104 rather than 66 weeks. Curiously, although they were introduced in order to comply with age discrimination, under an exemption in the regulations, they enable age and length of service to still be taken into account when calculating compensation payments. However this now has to be done on a slightly different formula. The new formula is the one that is used in the calculation of statutory redundancy pay.

As with the previous scheme, it is still possible to apply a pay cap at the statutory rate of £290 per week.

Although the provisions of this scheme came into force on the 1st of October, the regulations were not laid before the Parliament until late September making it impossible to bring this report before Council until today. However consultation with unions through the formal Joint Consultative Group was conducted on the basis of the draft regulation that was made available to the Council in late August.

As can be seen from the consultation documents, I proposed that we follow the statutory scheme using a multiplier of 2.2 and thereby limiting the maximum eligibility to 66 weeks as at present. Consideration of any enhancement beyond the current 66 weeks up to the maximum discretionary allowable of 104 weeks would be considered on the grounds of compassion. It was also proposed to apply the pay cap, again lifting it only on compassionate grounds.

It was stated in the consultation that the definition of compassion would accord with that adopted by the County Council namely: "Situations of severe personal distress resulting from non-financial circumstances affecting the individual or close relative leading to unavoidable financial hardship".

The unions and staff raised no objections to using the multiplier proposed but made it very clear that they had very strong objections to the proposal to cap pay such was the strength of feeling amongst their members that if this was implemented they would be minded to ballot their members on industrial action.

In the light of the strength of feeling on this issue, and recognising that by limiting payment to 66 weeks the costs of not applying the cap will be no greater than the costs of the current scheme, I am recommending that in order to safeguard our good relationship with our staff we do not apply any pay cap.

4. Consideration of Changes to the Council's policy on retirements under the "rule of 85" (regulation 31) and clarification of policy under regulation 26 retirements

Following the decision of the Council at its last meeting to terminate the Council's local scheme, any applications for early retirement under paragraph 26 of the regulations will be determined on a case-by-case basis to ascertain whether they are in the interests of the efficiency of the service.

Nationally the government is proposing to terminate early retirement under the rule of 85 which is part of regulation 31. The changes proposed nationally have been contested by the unions who sought to challenge it in the high court. The challenge failed. I understand that the proposed changes will now take effect until December of this year.

As this issue is being resolved nationally no immediate changes are required by the Council to comply with the Age Discrimination legislation in relation to pensions, however as can be seen from the consultation documents, in the light of the proposals to terminate this scheme with limited protection only for

older workers I have consulted on a proposal to amend the Council's policy in respect to rule of 85 requests.

Under the current regulations, employees meeting the rule of 85, who have not reached the age of sixty, have to receive the employer's consent to receive their pension. Our policy states that such consent will always be given, whatever the circumstances. As a consequence of this there is no obligation to examine whether any of these retirements are in the interests of the efficiency of the service.

In the consultation process, I proposed that the Council policy be amended to state that retirements under the rule of 85 that require the employer's consent are only acceded to where that particular application can be shown to be in the interests of the efficiency of the service. If this test can only be met by offering a partially or fully actuarially reduced pension, then the pension release be approved only on this basis. Efficiency in this case would mean either financial savings and/or quantifiable quality improvements judged on a case by case basis.

Following the termination of the Council local scheme at the last Council meeting, the Council is required under regulation 102 to set-out its policy on determining applications under regulation 26. As both policy and regulations are currently evolving it would seem appropriate to set-out a policy that continues to delegate to myself the power to determine applications for early retirements on the grounds of efficiency, with any appeal coming to a member panel. Efficiency shall include (but not be limited to) both financial savings and/or quantifiable quality improvements judged on a case by case basis.

5. Financial Implications of the Recommendation

As the proposals will limit compensation payment to a maximum of 66 weeks (except in case of compassion) which was the maximum payable under the previous regulations, and because the two formulas used are very similar, and the number of redundancies made by the Council very small, the financial consequences of this proposals are likely to be minimal.

In regard to retirements under the rule of 85, these are likely to be greatly restricted in the future under the national scheme anyway. I propose to ensure that all applications that require our approval are subject to a test of efficiency that will result in a modest saving. However because this process is initiated by an employee application it is not possible to estimate this saving.

6. Other options considered and assessed

During the consultation meetings I did raise with both staff and unions the possibility of making compensation payments on a flat rate basis, irrespective of age or length of service. This would have the advantage of being clear and understandable by all employees. There appeared to be no support from staff or unions for this proposal so although permissible under the regulations, I have not developed it any further.

When the opposition of both staff and unions to the proposal to cap compensation payments at £290 per week became apparent, I did seek to ascertain whether the same opposition would apply if a cap was applied at a

higher level. Again such an approach would be permissible under the regulations. The response was that the unions believed that the principle of capping pay in this way was inequitable and they would strongly oppose its introduction at any level.

7. Comments of Corporate Head for Finance and Resources

The Chief Executive has already identified in the report that his recommendations would result in a cost neutral position in relation to a comparison between the existing and proposed policy for redundancy compensatory payments.

In addition he has also identified that by placing a test of efficiency on the policy of employer consent for release of pension under the rule of 85 pension, rather than the current policy of employer consent always been given, would result in modest savings should any application be received. As each case is unique based on an employee's age, length of service and salary level, it is difficult to quantify the extent of these savings. However, the figures below show some examples of capital costs the Council has incurred on previous releases of pension under the rule of 85.

<u>Case</u>	<u>Length of Service</u>	<u>Age</u>	<u>Leaving Salary</u>	<u>Capital Cost</u>
A	38	55	£26,020	£34,739
B	40	58	£41,670	£15,618
C	40	56	£27,686	£42,123
D	36	58	£35,000	£10,572
E	30	59	£21,800	£6,883

With regard to the test of efficiency, I have reviewed the process for considering early releases of pension with employer consent and in consultation with the Council's external auditor have introduced a 5 stage approval process to provide a method of internal control. The stages comprise of:

1. Service Manager production of Business Case including a test of efficiency taking account of the following:
 - a. Financial issues
 - b. Working capacity
 - c. Business impact
 - d. Risk Impact assessment
 - e. Skills impact assessment
2. Human Resources Manager advice of appropriate employment law related issues
3. Section 151 advice of the affordability of the business case and whether the application represents Value for Money and is in the interests of the taxpayer at large.
4. Monitoring officer advice that the application accords with council policy and is lawful

5. Chief Executive's determination of the application as Head of Paid Service based on the business case and advice of key officers identified at steps 2 to 4.

8. Comments of the Human Resources Manager

The new regulations relating to the discretionary compensation regulations come into force alongside the Employment Equality (Age) Regulations. They specifically revoke the discretionary powers that are currently consolidated into the Local government (Early Termination of Employment)(Discretionary compensation) (England and Wales) Regulations 2000. The discretions were previously applied to provide an enhanced compensation scheme for redundant employees aged up to 50. Currently the termination of employment on the grounds of redundancy, for employees at age 50 or above, automatically effects a release of pension. The redundancy payments for employees aged 50 were made at the statutory levels without enhancement. I anticipate that the changes to the pension scheme regulations, especially in relation to flexible retirement will warrant further adjustments to the scheme. The decision to terminate employment on the grounds of redundancy is now made through a detailed procedure requiring input from the relevant service manager, HR, S151 officer, the monitoring officer before final determination by the Head of Paid Service, the Chief Executive.

9. Comments of Monitoring Officer

R.26 of the Local Government Pension Scheme Regulations 1997 (as amended) (" the regulations") permits early release of unreduced pension at age 50 and over, provided the employer certifies the reason for retirement was redundancy, which is defined to include in the interests of the efficiency of the service. This requires a judgement to be made about the interests of efficiency. The introduction of the procedure for determination will ensure all consents to early release of pension under this rule are lawful. It is appropriate for the Chief Executive to be given authority to determine all such applications in the way described at paragraph 5 of the recommendations.

R.31 of the regulations does not require any consent or certificate of the employer, unless the applicant is aged under 60. Any consent does not require a judgement to be made, however, by virtue of rule r.106 of the regulations, the Council is required to have a policy. The policy proposed will require the same considerations as those applied in respect of requests for pension release under r. 26.

10. Future developments

Local Government pension policy is in a state of flux at the moment as the government seeks to amend the scheme to take account of an ageing population and the consequential costs to pension funds, whilst unions seek to protect their members from adverse changes. It has been intimated that further changes are likely, particularly around flexible retirements. These are likely to require further changes to the Council's pension policy and as details become known I will report them to Council.

11. Contact officer

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