

To: **Governance & Audit Committee 20 July 2022**  
**Council 14 September 2022**

---

**Special Severance Payments-Statutory Guidance**  
**Executive Director: Delivery**

**1 Purpose of Report**

- 1.1 To set out the provisions and effect of recently published Statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England.

**2 Recommendation(s); That the Governance and Audit Committee.**

- 2.1 **Notes** the contents of the Statutory Guidance on the making and disclosure of special severance payments by Local Authorities (Appendix A)
- 2.2 **Recommends** to the Council that the delegations set out in Appendix B for the granting of Special Severance Payments be approved for inclusion in the Constitution
- 2.3 **Notes** the contents of the pro forma document (Appendix C) used for all special severance cases submitted for approval in accordance with the delegations set out in Appendix B.

**3 Reasons for Recommendation(S)**

- 3.1 That in the exceptional circumstances where it is decided that a Special Severance Payment should be paid, that the payment arrangements continue to be fair, lawful and provide value for money for the taxpayer in accordance with Government Statutory Guidance.

**4 Alternative Options Considered**

- 4.1 The recommendations are based on statutory guidance which should be followed unless there is good reason not to in a particular case.

**5 Supporting Information**

- 5.1 Statutory Guidance on the making and disclosure of special severance payments was issued by the Department for Levelling Up, Housing and Communities on 12 May 2022.
- 5.2 In summary the Guidance;
- Defines Special Severance Payments as additional, discretionary sums paid on top of statutory and contractual redundancy or severance terms.
  - Gives examples of payments that are likely to be Special Severance Payments which includes payments reached under a settlement agreement to discontinue legal proceedings without admission of fault.

- Gives examples of payments which may constitute Special Severance Payments including pension strain payments arising from employer discretions to enhance standard pension benefits and PILON payments.
- Identifies payments which will not constitute Special Severance Payments including statutory redundancy payments and contractual redundancy payments whether applicable to compulsory or voluntary redundancy and whether agreed by collective agreement or otherwise, a pension strain cost where a member's retirement benefits become immediately payable without reduction, payments made as part of an ACAS early conciliation procedure and payments ordered by a court or tribunal or agreed as part of a judicial or non-judicial mediation.
- Requires local authorities to comply with the Best Value duty and to be able to demonstrate the economic rationale behind a proposed Special Severance Payment and to seek legal advice on the prospects of successfully defending an Employment Tribunal claim in deciding whether the proposed payment is good value.
- Indicates there may be exceptional circumstances where the existing statutory or contractual entitlements are insufficient to facilitate an exit, including when settling disputes but again only after receiving appropriate professional advice enabling a conclusion that a Special Severance Payment is a good use of public money and also where there is appropriate evidence that alternative routes of settling disputes have been considered and/or exhausted.
- Notes that even in cases where a commercial settlement is possible which would save the authority money compared to the cost of defending and defeating an apparently frivolous claim it might still be the case that continuing to defend the case at the extra cost would be appropriate in order to discourage other such vexatious claims.
- Provides an expected approval process for Special Severance Payments where any payment of £100,000 or more must be approved by full council, payments of £20,000 and above but below £100,000 to be personally approved and signed off by the Head of Paid Service with a clear record of the Leader's approval and payments below £20,000 to be approved according to the authority's scheme of delegation (noting that it is expected that local authorities should publish their policy and process for approving these payments).
- Reminds local authorities of various existing obligations to report pay data and exit payments and adds a requirement to disclose in annual accounts all severance payments and pension strain costs made in connection with termination of employment or loss of office.
- Sets out that an authority's s151 Officer and Monitoring Officer should be able to justify any Special Severance Payments that are made and, in particular, any such payments that are not consistent with the statutory guidance.

5.3 The Council should therefore have an approval process in place that enables it to consider the relevant criteria highlighted by the guidance, to ensure that any payment is approved at the correct level and to further ensure that appropriate records are created and kept in order that it can demonstrate compliance with the expectations and best value duties placed upon it. The report's recommendations are intended to satisfy this requirement.

## **6 Consultation and Other Considerations**

### Legal Advice

6.1 The Borough Solicitor is the author of this report

### Financial Advice

6.2 The guidance upon which the recommendations in this report are based sets out the government's view that Special Severance Payments do not usually represent value for money and should only be considered in exceptional circumstances. It reflects the statutory best value regime under the Local Government Act 1999 which requires the Authority to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness".

### Other Consultation Responses

6.3 The Assistant Director of Human Resources and Organisational Development was consulted during the preparation of this report.

### Equalities Impact Assessment

6.4 None

### Strategic Risk Management Issues

6.5 All special severance payments need to be considered in the context of the legal risk arising from an adverse Employment Tribunal outcome. The due diligence process in approving settlements will continue to require assessment of such risk

### Climate Change Implications

6.6 The recommendations in Section 2 above are expected to have no impact on emissions of CO<sub>2</sub>.

### Background Papers

None

### Contact for further information

Name of Officer: Sanjay Prashar

Borough Solicitor - 01344 355679

[Sanjay.prashar@bracknell-forest.gov.uk](mailto:Sanjay.prashar@bracknell-forest.gov.uk)

## **Appendix A**

[Statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444444)

**Appendix B:**

**Scheme of Delegation for Special Severance Payments to be incorporated in the Constitution**

**Payments below £20,000**

Executive Director in Consultation with Borough Solicitor and Head of Human Resources and Organisational Development

**Payments of £20,000 and above, but below £100,000**

Chief Executive with agreement of the Leader

**Payments of £100,000 and above**

Vote of full council

**Appendix C**

**Special Severance Payment**  
**[Name of Employee]**

| <b>Special Severance Payment Business Case</b>                             |  |
|--|--|
| Name of requesting Officer   |  |
| Date of submission   |  |
| Date decision is needed and why  |  |
| Overview of the Case   |  |
| Terms of Employment  |  |
| Breakdown of Proposed exit payment   |  |
| Borough Solicitor Comments   |  |
| Assistant Director Human Resources and Organisational Development Comments |  |

Executive Director Resources Comments

**Approved:**

**Executive Director (payments below £20k):**  
**Date:**

**Chief Executive (payments £20k to £100k)**  
**Date:**

**Council (payments £100k+)(insert minute number)**  
**Date:**