

**TO: EDUCATION EMPLOYMENT COMMITTEE
17 OCTOBER 2011**

**SEVERANCE POLICY OPTIONS
(Director of Corporate Services – HR)**

1 PURPOSE OF REPORT

- 1.1 To set out the reasons for and legal basis of the Council's current severance policy and to consider what approach to take in the future. In the light of the continuing need to make budget reductions, there is a need to examine the level of severance payment but also a need to ensure that future restructurings and redundancies are dealt with fairly and good employee relations maintained.

2 RECOMMENDATION(S)

That the Committee recommend to full Council that it:

- 2.1 **Retains the use of actual weekly pay levels for redundancy purposes**
- 2.2 **Retains the policy of paying statutory weeks only to those with immediate access to pension**
- 2.3 **Reduces the current x 2.5 multiplier of the statutory table for those with no immediate access to pension to a multiplier between x 1.75 and x 2.**
- 2.4 **Continues with the policy of awarding added years only in exceptional circumstances.**
- 2.5 **Applies the new policy with effect from 1 December 2011.**

3 REASONS FOR THE PROPOSED CHANGE

- 3.1 The approach to paying a multiplier of the statutory redundancy calculator has helped to maintain a positive employee relations climate in difficult times. Maintaining a difference between those with access to pension and those without means that enhancements are targeted at those who have no additional means of support from their pensions after they have lost their jobs at the Council.
- 3.2 The new recommended severance policy is the median level applied across local government and represents a balanced approach towards severance payments. 56% of authorities who took part in a recent survey of severance policies confirmed that they paid at this level.
- 3.3 As part of the general responsibility for the Council's budget this issue was considered by the Executive as it needs to be in accordance with the Council's overall financial planning.

In addition, the Executive is responsible for the overall performance of the Council and any change to redundancy arrangement is likely to impact on this, as outlined in the report.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council could provide enhanced payments to all those eligible for redundancy, irrespective of pension access. However this would mean an increase in costs and a more generous package for those who would already have access to pension on being declared redundant.
- 4.2 The Council could use up to a x3 multiplier but this would lead to a significant increase in redundancy costs.
- 4.3 The Council could use a x1.5 multiplier but this would provide only a very modest increase on statutory amounts and would put it below the average level for severance policies amongst all local government employers.
- 4.4 The Council could use statutory weeks only, which would make its severance payments the lowest amongst all local government employers.
- 4.5 The Council could use different and variable multipliers, but the legal defence that it is currently using the statutory basis or a multiplier thereof would be invalid and would open itself to accusations of age discrimination which it would find hard to resist.

5 SUPPORTING INFORMATION

5.1 Severance policy principles.

Since 1999, those Committees responsible for employment have kept a consistent approach to severance payments and to the principles underpinning the granting of early retirements. Severance payments are also closely linked with Pensions Regulations, and these will be mentioned in this report but only as they relate to severance; the full set of pension discretions is periodically reviewed by this Committee.

5.2 Selection for redundancy

- 5.2.1 The Council's Redundancy Policy deals in detail with how employees are selected for redundancy and is as follows:

Where a redundancy is unavoidable and more than one employee is potentially affected, the method of selection will be fair and non-discriminatory.

Factors in the selection method will include:

- The qualifications, skills, experience and ability of postholders required to maintain the efficient operation of the Council's services.
- An employee's past work performance, attendance record, disciplinary record.
- Length of service
- Curriculum needs of the school.

This approach is standard throughout the public sector as it is based on the simple principle of firstly retaining those employees who, going forward, fit the criteria for any new structure and are therefore operationally the best fit, those who have a reasonable sickness/disciplinary record before eventually moving to the final criteria of Last In/First Out (LIFO).

5.3 **Current Severance Policy**

5.3.1 In brief, the current approach to redundancy/severance payments is as follows:

- In all cases the Council uses actual weekly pay to calculate the amount due.
- The Council pays the statutory number of weeks to those who have immediate access to their pension.
- For those who do not have access to pension, an enhanced severance payment is made, as they will have no pension income or pension-related lump sum on leaving. This is x 2.5 the statutory minimum level of payment with a maximum level of 75 weeks pay.

This policy aims to give a fair but not over generous settlement to employees and has been a significant factor in the sound industrial relations context around severance over a number of years in which major Council reorganisations have been implemented. The logic of the policy was to exercise discretion in favour of those with no access to pension to ensure they received a reasonable severance package.

The full extent of the discretions available through the Discretionary Compensation Regulations (DCR) which allows councils to pay up to 104 weeks in redundancy situations, has never been used as the Council felt it was unnecessary to utilise the maximum amounts. In particular Bracknell's approach avoids paying enhanced redundancy payments to those who already have access to pension.

5.4 **The legal basis of the severance payments made**

5.4.1 Employers must pay, as a minimum, statutory redundancy in accordance with the Employment Rights Act 1996 (ERA). The number of weeks paid varies with age and service, but the maximum achievable amount is 30 weeks pay while the minimum is 1 weeks pay. The ERA imposes a cap on the amount of weekly pay to be used in the calculation, currently £400 p/w. However it is common for employers to waive this cap and use actual weekly pay, and virtually all local authorities including this one do so; the Local Government (Discretionary Payments) Regulations 1996 explicitly give Local Government employers the power to use actual weekly pay for the calculations.

5.4.2 The Discretionary Compensation Regulations (DCR) available to local government allow payment of severance up to 104 weeks pay. There has to be an objective justification for the amount paid, and where age and service are a factor in this, the model used must be a multiple of the number of weeks in the statutory redundancy calculator, eg x2 or x3.

The pension scheme rules allow the award of added years, and the Council's policy is that up to five added years may be awarded but that this would be only in exceptional circumstances. The option is very rarely exercised, only twice in the past ten years.

5.4.3 No change is suggested to the principles of early retirement agreed by this Committee, which are:

- (i) No employee should regard early retirement for which the employer's consent is required as his or her automatic right, nor should the exercise of the employer's discretions be expected as a right. Discretions will only be exercised where there is a benefit to the organisation which adequately justifies their use.
- (ii) Early retirement is not a substitute for proper performance management and will not be used by management to resolve competence/capability problems.
- (iii) On occasions early retirement is a valuable management tool which enables decisions to be made to effect savings and/or improve efficiency in the organisation. It will also avoid the negative industrial relations impact of compulsory redundancies.
- (iv) Employees will be treated in a fair and equitable manner.
- (v) Each case must be assessed individually, and the costs and benefits to the organisation clearly presented to the decision-makers as part of that case.
- (vi) Decisions on early retirement must be made with regard to the Council's overriding responsibility to act with prudence and propriety and in accordance with the age discrimination laws.

5.5 **The National Picture**

5.5.1 The Local Government Employers organisation commissioned a survey in 2009 of the severance policies operated by employers across the UK – 118 organisations responded. The first survey related to 2009/10 and during the last year 26% of respondents have changed this policy.

The results from the second year of the survey ie 2010/11 are tabulated below:

Policy in cases of redundancy	%age Local Authorities (policy for general LA staff)	%age Local Authorities (policy for school support staff)
Actual salary for redundancy payments	94	86
Using the lump sum (DCR) compensation in all cases	46	52
Using the lump sum (DCR) compensation in some cases	10	13
Multiplier applied where DCR compensation given:		
X1	Not quoted	Not quoted
X1.5	24	29
X2	32	29
X2.5	4	5
X3	2	2

Note that whilst schools can set their own redundancy policies, the approach since 1998 has been for them to mirror that of the Council.

5.5.2 The main findings of the survey were that more than 9 out of 10 respondents used actual salaries to calculate redundancy payments; that around a half of respondents awarded lump sum compensation in all redundancy cases; and that where offered, lump sum compensation was generally calculated using multipliers up to x3, but that the most commonly used multiplier was x2 (this especially true for the South east authorities).

5.6 **Options on use of discretions**

5.6.1 As can be seen from the information above and in paragraph 5.3, the Council pays neither the highest nor the lowest severance of the authorities surveyed.

Clearly there are a range of options available to the Council if it were to consider changing its approach to the payment of severance for employees:

- A Pay statutory redundancy only at the capped weekly rate to all employees irrespective of pension access (ie exercise no discretions)
- B Pay statutory redundancy only at actual weekly pay rate to all employees, irrespective of pension access
- C Where there is no access to pension, pay a multiplier of the actual weeks' pay in statutory redundancy, either x1.5, x2, x2.5 or x3 all fall within the 104 week maximum limit; use the statutory table at actual week's pay only (ie x1) where there is access to pension.

5.7 **Cost implications**

5.7.1 2010/11 was a year which saw a larger than usual number of redundancies across the Council due to the challenging financial situation. In total, the current policy resulted in 74 redundancy payments.

The average time to recoup the redundancy payment for those without access to pension, based on the current x2.5 statutory enhanced payments scheme, 25.2 weeks or 0.5 years. Median payment: £5,946.

The average time to recoup the redundancy element of severance for those with access to pensions, whose payment is the statutory number of weeks, 17.7 weeks or 0.35 years. Median payment: £2,961.

The adjusted medians based on 2008/09, 2009/10 and 2010/11 figures are:

Median payment for enhanced payments (no access to pension): £5,020.

Median payment for statutory payments (access to pension): £4,630.

5.7.2 The 3 year figures reduced the 2010/11 enhanced (non-pension based) median whilst the statutory median is higher, because a large number of the statutory beneficiaries were on higher salaries/age/service than those made redundant in 2010/11.

This clearly demonstrates that the annual medians are nowhere near a constant, and one year is very unlike another.

Capitalised costs of pension are not included in the figures as pensions are automatically triggered in redundancy cases for those over 55 and thus the Council has no influence on the capitalised costs (the capitalised cost is the one off amount the Council has to pay to the Pension Fund to allow for early payment of a pension).

5.7.3 Although the budget position within schools has been challenging the number of redundancies made during 2010/11 was three school staff.

5.8 **Non-cost impact**

5.8.1 There is clearly a significant climate of change affecting local government employees; at a national level pension changes are inevitable and employees have had a 2 year pay freeze which is likely to be extended for perhaps another 2 years. At a local level as part of its savings plan:

- 18 months ago, the Council removed Essential Car User status from 164 staff whilst at the same time introducing car parking charges between £100 and £450 pa which saved £600K per annum.
- at its last meeting the Employment Committee agreed to reduce car mileage rates which saved a further £40k per annum.

5.8.2 Employees have clearly seen a reduction in their terms of employment, an erosion of some elements of their base conditions and, as a consequence, there is no doubt that local government is in a very difficult employee relations environment. It is against that background that a review of the severance terms must be viewed as if any change is perceived by staff as being unfair this could impact on the performance of the organisation on respect of service delivery.

There are some specific issues which impact on the severance scheme itself:

- It is a reasonable assumption that fewer employees At Risk would be prepared to volunteer for redundancy at rates which were viewed as below the norm for local government, and that selection outcomes would be more vigorously contested as employees contest their selection for redundancy.
- Any significant change to the current policy would undoubtedly be seen as penalising those about to lose their jobs, and would not find favour with the unions. The Council enjoys a constructive and realistic relationship with its main trades unions, who acknowledge that change is sometimes unavoidable but try to ensure fair treatment of those At Risk; a change to the current policy would affect this situation.
- Employees already feel that other relatively modest changes and proposed changes to terms and conditions are damaging morale, and a change to the severance pay policy would likely be seen in the same light, ie a measure which particularly penalises vulnerable and low paid employees.

5.8.3 It is believed that the Council's ability to achieve structural changes and savings in the context of relatively harmonious and constructive employee relations is partly due to the commitment to pay above the statutory minimum to those who are unfortunate enough to lose their jobs without any immediate payment of pension available whilst avoiding the excesses of payments at the level of maximum discretion. The current employment market makes it quite difficult for people to secure employment readily, and the severance package helps them through the period of seeking new work.

- 5.8.4 Bracknell's good reputation as an employer includes the way it is seen to treat those who leave its employment as well as those who remain in employment. It is also clear that in the past the Council's excellent performance (as demonstrated by its Comprehensive Performance Assessment reports and other external inspections) has, in no small measure, been due to it being an "Employer of Choice" and its reputation of having a robust but fair approach to employee relations.
- 5.8.5 Although the pay and conditions for teachers is different from the local government employees similar arrangements are in force regarding a pay freeze with the last increase taking affect in 2010.

6 CONCLUSION

- 6.1 Redundancies have become a necessary part of the management of the Council's workforce. It is important to ensure they are managed in a fair, equitable and cost effective way; the changes to the current policy outlined in this report reflect that approach ie
- Maintain the use of actual weekly pay.
 - Reduce the multiplier.
 - Maintain the use of statutory pay levels for those with access to pension.
 - Award added years only in exceptional circumstances.
 - Apply the policy from the earliest date possible ie from 1 December 2011.

7 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 7.1 Nothing to add to report.

Borough Treasurer

- 7.2 The costs for school redundancies are charged to the central part of the Schools Budget managed by the local authority. The budget line for this will be set in agreement with the Schools Forum and any under spend is reallocated to schools. Any overspend in the budget line will need to be covered by the dedicated schools budget.

Equalities Impact Assessment

- 7.3 An EIA has been completed with particular regard paid to the impact of any age and length of service related issues in the light of the Council's use of the statutory linked calculators. No adverse impacts were noted.

Strategic Risk Management Issues

- 7.4 As outlined in the report particularly paragraph 5.8.

8 CONSULTATION

Principal Groups Consulted

8.1 This proposed policy change was considered by the trades unions.

Method of Consultation

8.2 Teacher and Support Staff Association

Representations Received

8.3 No representations have been received to date from the teacher unions. The trades unions for school support staff, Unison and GMB, expressed that they are not supportive of the suggested changes and advised that they were making their representation through the Employment Committee.

Background Papers

Contact for further information

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