

TO: EMPLOYMENT COMMITTEE  
17 DECEMBER 2014

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**OPEN LEARNING CENTRE – ACCESS TO BACKDATED PENSION  
(Director, Children, Young People & Learning – Human Resources)**

**1 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to inform the Committee of the backdated payments made to the Local Government Pension Scheme for three post holders previously employed by the Council. This followed a challenge to their pension access entitlements from the post holders and their Trades Union after the decision at the Employment Committee in December 2013 to make their posts redundant.

**2 SUPPORTING INFORMATION**

- 2.1 As a result of the Family Learning Strategy and the Skills Funding Agency (SFA) reducing their grant to the Council it was necessary to close the crèche and Early Years classrooms at the Open Learning Centre. This resulted in a small group of part-time staff no longer being required. The 4 December 2013 Employment Committee declared the following posts redundant with effect from 31 December:
- Two Early Years Tutors
  - One classroom assistant
  - One crèche worker
- 2.2 Three of the four employees were able to access to their pension. However following their dismissal, and with the support of their Regional Trades Union Officer, the three employees challenged their previous pension records stating that all of their original service back to their start dates in 2001 should have been pensionable.
- 2.3 When the employees started with the Council in 2001 they were paid on submission of monthly time sheets. This was a slightly unusual arrangement which was made specifically at the Open Learning Centre at that time and, as a result, they were treated as casual employees for contractual and payroll purposes. This appears to have been implemented to enable greater flexibility in their working hours but resulted in incorrect service records being retained on the system. The regularity of their work over this whole period of time was not what could and should have been deemed as casual employment. They were in fact regular employees and should have been classified as such. When their records were being reviewed for the purpose of calculating the redundancy and pension entitlement estimates in all cases the costs agreed at the Employment Committee were incorrect.
- 2.4 The Local Government Pension arrangements prior to April 2008 allowed casual employees entry into the Scheme but admission was not automatic and casual workers only became Scheme members upon making a formal request to 'opt in'. There was no record on any files to suggest that the affected staff were ever given the opportunity to opt in to the Scheme back at the time of their eligibility. After it was agreed that they would be made redundant, the employees elicited the support of Unison and officially challenged the fact they had not been given their due right to join the Scheme.

The department then conducted an in-depth review of all the employment records, including the payroll records. This was a time-intensive process which involved processing archived files but the dates of service were eventually confirmed and on that basis it was clear that there was no evidence to defend the Council's position.

- 2.5 The above arrangements requiring the 'opt in' was required for casual employees only. However these were not casual workers so they should have been automatically entered into the Local Government Scheme without the 'opt in' requirement. Subsequently they missed out on some of the regular employee benefits to which they were entitled such as sick leave for the whole period of their employment.
- 2.6 Unison therefore correctly challenged the opportunity to gain entry into the Scheme back to their original contractual start dates. This had the following effect:

Employee A - backdated entry from 01/10/2001 - 31/10/2012  
Employee B\* - backdated entry from 01/06/2001 - 30/06/2005  
Employee C - backdated entry from 8/05/2001 - 30/09/2012

\* Employee B made a positive election to join the scheme in 2005

- 2.7 The legal position was relatively straight forward. Under the pension regulations the employees should have been given entry into the pension scheme at the time of their original appointment. This was further supported by the the Preston case from February 2001 which allows part time employees backdated entry into their workplace pension schemes going back as far as 1976 should they choose to.
- 2.8 As a result of this additional capitalised costs were incurred in agreeing their backdated entry into the scheme. For the Council this amounted to a total of £18,025. The amount which was previously agreed at the December Employment Committee were £4,179 so the difference was £13,911. In addition there was a backdated payment to be made on the employers pension contribution for the time they were denied their right to join the pension scheme, this amounted to £16,630. The additional total which therefore had to be paid was £30,881. These cost were met from the Structural Changes Fund. The ex- employees also had to pay a sum themselves as their own employee contributions for the backdated period which amounted to several thousand pounds each.

#### Contact for further information

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