

Report to: Council Functions Committee

Date of Meeting: 28th March, 2007

Report of: Head of Human Resources

Title: Proposals for a revised Early Retirement Scheme

1. **SUMMARY**

Following the publication of the new Discretionary Compensation Regulations 2006 in December 2006, the Council needs to consider proposals for a revised Early Retirement Scheme. Options were presented to the Corporate Management Board and consultations have taken place with UNISON on the resulting proposals. The attached report considers these options and puts forward proposals for the new scheme and UNISON's response to this.

2. **RECOMMENDATION**

That the Committee consider these proposals and UNISON's response to them and determines the preferred option.

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Report approved Tricia Taylor, *Corporate Director*

3.0 DETAILED PROPOSAL

3.1 Introduction

The new Discretionary Compensation Regulations (2006) were finally issued in December 2006 and backdated to 1st October, 2006.

These regulations mean that the Council needs to review its early retirement policy contained in the Employment Agreement and replace it with a new scheme which complies with both the requirements of these new regulations and the Age Discrimination legislation (also effective from 1st October 2006).

3.2 What do the new Discretionary Compensation Regulations provide for?

3.2.1 These regulations give local authorities the power to consider compensation payments to employees whose employment is terminated early by reason of redundancy, in the interests of the efficiency of the service or in the case of a joint appointment, because the other post holder has left it.

3.2.2 The main provisions of these regulations are:-

- Councils retain the discretion to raise the weekly pay ceiling on statutory redundancy payments up to an actual week's pay.
- Provide a discretionary power to award a one off lump sum payment of up to but not exceeding 104 week's pay inclusive of any redundancy payment.
- Remove the power to award added years.

Transitional protection is provided for those employed before 1st October 2006 and whose termination date is before 1st April 2007. However in so doing councils will remain vulnerable to claims of age discrimination.

3.2.3 Can added years still be awarded?

Although councils cannot award added years under the Discretionary Compensation Regulations, it is still possible to award additional year's service under the LGPS regulations at any point during an employee's service (but not after termination).

The maximum number which can be awarded is the lesser of:

- The difference between the employee's actual membership and the membership they would achieve at 65.
- 6 years 243 days.

Any such lump sum is paid for by the Pension Fund and not from the revenue account of the relevant authority. However the employer has to agree to pay the additional contributions to the pension scheme to cover the capital cost of the added years.

3.3. Considerations in developing a new policy

3.3.1 There are certain key questions to be asked in developing a new policy. These are primarily:-

- Whether to waive the weekly pay ceiling placed on statutory redundancy payments and calculate on pay up to an actual week's pay.
- How will this authority choose to exercise its discretion within the 104 week limit?
- Will a different approach be taken in respect of redundancies, joint appointments and interests of efficiency of the service terminations?
- Will any use be made of the augmentation provisions?
- What are the options and the potential costs of the different options?
- What approach are other authorities adopting?
- Should WBC attempt to develop a harmonised policy with TRDC and Dacorum in anticipation of Shared Services?

3.4 An exploration of options

3.4.1 On 19th September 2006, CMB considered a previous report on its options under the draft Compensation Regulations. The conclusion of the discussion on this matter was to take as a sample the redundancies which occurred in the financial year 2005/6 and to calculate the costs and savings of paying only statutory redundancy payments or to use a 1.5 calculator on the number weeks arrived at per case. Flexibility was sought in relation to efficiency of the service terminations and added years provisions in the current early retirement scheme were suspended. A 2.2 multiplier has also been added which is being proposed by some councils.

The conclusions of the 2005/6 sample are shown below:-

Sample – 28 employees

| Option | Total | Redundancy Pay | Actuarial Strain | Added Years Actuarial Strain |
|---|--------------|-----------------------|-------------------------|-------------------------------------|
| Sample – 28 employees | | | | |
| Actual costs 2005/6 | 958,744 | 302,051 | 287,520 | 369,173 |
| Option 1 - Costs of Redundancy based on actual weeks' pay | 589,571 | 302,051 | 287,520 | No added years |
| Option 2 – Costs of stat limit only | 444,794 | 162,274 | 287,520 | |
| Option 3 – Costs of 1.5 calculator up to max of 45 weeks | 740,597 | 453,077 | 287,520 | |
| Option 4 – Costs of 2.2 calculator up to a maximum of 66 weeks | 952,033 | 664,513 | 287,520 | |

Savings of Option 1 against actual costs would be £369,173 due to the savings on actuarial strain caused by the removal of added years.

Savings under Option 2 against actual would have been £508,950

Savings under Option 3 against actual would have been £218,147.

Under Option 4, the savings are only £6711. In other words if a 2.2 multiplier were chosen the costs would have been almost as expensive as added years.

If the statutory maximum of £290 had been applied (option 2) the costs would have been £449,794. However because very few employees earn as little as £290 per week the vast majority of employees would lose out under this option. Of the 28 employees made redundant in 2005/6, 26 earned substantially in excess of £290 a week, the average salary being £513. Nine earned weekly pay in the £600 - £727 range.

Because it has been normal local government practice to pay redundancy pay based on actual weekly pay a strong reaction could be anticipated to paying redundancy based on the statutory maximum of £290 particularly in the context of the loss of added years to the over 55 group who would be the biggest losers overall.

3.4.2. What approach are other authorities taking?

The approach between Councils varies. Of 17 Councils in the eastern region who have determined their policies in cases of redundancy, the following approaches have been taken:-

| <i>No. of authorities</i> | <i>Compensation Awarded for Redundancy/Dismissal</i> |
|---------------------------|---|
| 6 | 1.5 x no. of weeks actual pay |
| 1 | 2 x no. of week's actual pay |
| 3 | 2.2 x no. of weeks actual pay (Equivalent to max. of 66 weeks pay) |
| 1 | 2.6 x no. of weeks actual pay |
| 2 | 2 to 3.42 x no. of weeks actual pay |
| 1 | locally determined calculator which Goes up to 66 weeks |

The most popular approach to date therefore has been to apply 1.5 multiplier to the number of weeks pay emanating from the redundancy ready reckoner. This gives a maximum of 45 week's pay and is significantly less than the 104 weeks maximum permitted and less than the maximum of 66 week's pay which many authorities adopted under the previous discretionary compensation regulations.

The second most popular option to date is to apply a 2.2 multiplier to the number of weeks emanating from the redundancy ready reckoner. This retains the maximum number of week's discretion that was available under the previous discretionary compensation regulations (i.e. 66 week's pay) and represents status quo in this respect except for the loss of added years. However it should be said that at Watford Borough Council, the 66 weeks' discretion was not utilised and employees were only eligible for a maximum of 30 weeks' redundancy pay.

The 66 week maximum is proposed by Three Rivers District Council and Dacorum Borough Council because they feel it would not be acceptable in their authorities to reduce the current discretion available but they have not increased it to the maximum possible(i.e. 104 weeks pay).

The County Council is considering a policy for the under 50's of up to 66 weeks actual pay in line with current policies (2.2 multiplier) and for over 50's an award of up to 30 weeks pay since employees will receive their pension immediately. In addition they are considering an award of added years on a formula yet to be decided. However this is a potentially challengeable approach under the Age Regulations.

There is much greater variation in respect of compensation offered in respect of interests of the efficiency of the service terminations. Of those authorities in the Eastern Region who have responded to a recent survey the approach taken has been as follows:-

| <i>No. of authorities</i> | <i>Compensation awarded in the efficiency of the service dismissals</i> |
|---------------------------|---|
| 4 | Individual assessments on a case by case basis |
| 3 | 1.5 times no. of weeks actual pay |
| 1 | 2.2 times no of weeks actual pay |
| 1 | 3.466 no. of weeks actual pay |
| 1 | Maximum permitted under the Regulations (104 weeks) |

- | | |
|---|--|
| 2 | Will not be making any efficiency of the service Dismissals |
| 3 | Will not be awarding any compensation |

To date therefore by a small margin the most popular option was individual assessments on a case by case basis. The second most popular option was not to award any additional compensation (i.e. basic pension entitlement) and the 1.5 multiplier option (in one case representing less than they would award for redundancy cases).

In terms of transitional arrangements of 21 authorities, 14 authorities are putting in the transitional arrangements allowed under the Regulations and 7 are not. Many authorities are still considering their options and preparing their policies.

In cases of termination in the interests of the efficiency of the service, the exception to the age discrimination legislation which applies in cases of redundancy, (i.e. the use of age and length of service criteria on the redundancy ready reckoner) does not apply. If a Council does apply these criteria in this circumstance then there must be an objective reason for doing so in order not to fall foul of the age discrimination legislation.

The augmentation provisions explained earlier in this report are available for any age group but would not be payable to employees under 50 until their retirement. This factor and the potential expense of added years may account for the use of the multiplier approach in some Councils in relation to efficiency of the service.

3.4.3 Options for Watford

In considering options for Watford the table at Appendix 2 was prepared.

Using the 2005/06 redundancies as a base, a sample of 5 of different ages was used to look at the effects of statutory redundancy (based on actual weeks pay), a 1.5 multiplier (45 weeks), a 2.2 multiplier (66 weeks) and a 3.4 multiplier (104 weeks).

Based on these figures, it is clear that the 66 week option and 104 week option are expensive. Because the 2003 Early Retirement Policy did not utilise the discretion available in the previous Compensation Regulations to pay up to 66 week's pay, Watford has more flexibility in adopting an early retirement scheme than those authorities who already have this policy in place.

However, if Watford decided to adopt a harmonised policy in anticipation of HR Shared Services with Three Rivers District Council and Dacorum, it would need to adopt a policy based on 66 weeks. This approach is not recommended prior to the establishment of Shared Services because of the potential costs involved.

Watford's current early retirement policy provides for statutory redundancy based on actual weeks pay and up to 6 2/3 added years for employees who are over 55 in respect of termination on the grounds of redundancy.

In cases of interests of efficiency, accrued pension benefits plus a discretionary payment for employees of at least 5 years pensionable service not normally greater than 2/3 of a personal maximum. If employees ask to go or seek early retirement on compassionate grounds, no added years are payable. All added years were suspended due to Age Discrimination legislation with effect from 1st October, 2006.

4. Options Available – in cases of redundancy

4.1 Option 1

Statutory Redundancy based on statutory maximum

Statutory redundancy only for all facing redundancy regardless of age based on the statutory maximum of £290 per week. As was illustrated in paragraph 3.4.1., only 2 of the employees made redundant that year were on a salary of less than £290 and a third in the salary range of £600 - £727. All 26 would lose out significantly under this approach in terms of level of redundancy payment. In addition because added years would not be available, the loss to the over 50's in terms of package would be significant. It is also less than the current provision for redundancy of statutory redundancy based on an actual weeks pay. Although the cheapest option, in a Council where organisational change is common, this approach would be unlikely to be accepted by UNISON and would potentially cause a serious morale problem.

4.2 Option 2

Statutory redundancy based on actual week's pay

This option would be an inexpensive option. Employees under 55 would be unaffected. However, employees over 55 would lose the provision of added years without providing any alternative which might be seen as compensating for this loss in any way. At least some of this group would find difficulty in obtaining alternative employment in spite of Age Discrimination legislation. Again, this approach would be unlikely to be accepted by UNISON.

4.3 Option 3

Applying a 1.5 calculator to the Statutory Calculator

This option is less generous than the current policy and our shared services partners' but is emerging as the most common approach in the Eastern region in response to this legislation. It takes into account both Age Discrimination legislation in terms of treating all employees in the same way using a method acceptable under the Age regulations while taking into account that employees of 55 + lose the benefit of added years.

Utilising the sample of 2005/06 redundancies at Appendix 1, this approach would have increased the cost on an 'average' redundancy payment from £10,787.55 to £16,181.32 but the savings of not paying added years would have amounted to £369,173. Taking into account the additional cost of the 1.5 multiplier over statutory redundancy pay, the overall savings against actuarial strain would have been £218,147.32. Therefore there is still a substantial saving for the Council while potentially maintaining good - will amongst the staff.

In addition, the option is available to employees, when paying a discretionary payment above the statutory redundancy payment, to convert the discretionary payment above the statutory redundancy payment into added service in the pension scheme.

4.4 **Option 4**

Applying a 2.2 multiplier to the statutory calculator (i.e. a 66 week's maximum)

The costs of paying 66 week's pay above statutory redundancy (based on actual pay) would be substantial. For a sample group of 5 from the 2005/06 redundancy group, the costs of redundancy against statutory are £64,813. Again, the option of conversion of the discretionary elements of redundancy pay is available. This is a more expensive option than 45 week's maximum and since Watford Borough Council has not adopted the discretion of paying up to 66 weeks under its existing scheme there seems no imperative to adopt this more expensive approach unless it wishes to harmonise with Three Rivers District Council and Dacorum. This option is the one favoured by UNISON because it provides better financial benefits to staff. Indeed it is almost as expensive to provide as added years. (Please see table at 3.4.1). It should be noted that because redundancies at Three Rivers and Dacorum are comparatively rare that this option is not as expensive as it would be at Watford where redundancies are common linked to annual budget cuts and re-organisations.

4.5 **Option 5**

Paying the 104 week maximum

This option effectively pays an employee 2 years pay and is extremely expensive. This option is not recommended.

4.6 **Option 6 – an option on the discretionary element**

One option which the council may wish to consider which could act as a deterrent against the submission of employment tribunal claims would be to pay the statutory element of redundancy on termination and withhold the payment of the discretionary element till 3 months after the employee's employment with the Council had terminated following confirmation that a claim for unfair or wrongful dismissal had not been made to an employment tribunal or county court relating to employment or termination. This approach has been used very successfully by the London Borough of Hillingdon in cases of redundancy. Prior to withholding the discretionary element advice would be sought from the Legal section as a safeguard. It is suggested that this approach could be used with any of the options which provide for a discretionary element.

4.7 Using the Augmentation Provisions

In accordance with paragraph 2.3, augmented service can be offered to employees of any age based on the lesser of

- the difference between the employees' actual membership and the membership they would achieve at 65
- 6 years 243 days

This is a very expensive option in terms of actuarial strain costs. In redundancy cases, the employee is also still entitled to a statutory redundancy payment. Paying a lump sum is, in the main, a less expensive option.

4.8 RECOMMENDED that

Option 3 (i.e. applying a multiplier of 1.5 up to a maximum of 45 week's pay inclusive of their statutory redundancy payment) is adopted with the option for employees to convert the discretionary element into additional service in the pension scheme (if they wish). Secondly to withhold payment of the discretionary element for the 3 month period for submission of employment tribunal or wrongful dismissal claims paying it out only if no claim had been made.

5.0 Termination in the Interest of the Efficiency of the Service and Joint Appointments

5.1 At the CMB meeting in September, an option which would give maximum flexibility to the Council in respect of interests of the efficiency terminations was preferred. In smaller authorities where such terminations are rare it is possible to determine an award on a case by case basis taking into account individual circumstances and without a specific method of calculation set down. There have been no such retirements in this authority for over 2 years. It is emerging as the favoured option in the Eastern region, in a region where districts are the most common type of authority.

The second factor to take into account is that the exception to the Age Discrimination legislation in terms of a formula which takes into account age and length of service in respect of redundancy, does not apply in terminations by reason of interests of the efficiency of the service or joint appointments. Objective justification for the use of such criteria would therefore be required.

The authority has a number of options. These include:-

- Using the augmentation provisions

Comment – this is potentially an expensive option and could be criticised where capability problems were an issue.

- Paying up to 104 week's pay but using discretion to award a specific number of weeks taking into account individual circumstances and without a specific formula. However, objective reasons in each case should be recorded for audit purposes.

Comment - due to the rarity of such cases in this authority, this approach would provide maximum flexibility.

- Setting down a specific sum applicable to all, e.g. 6 month's pay or a specific cash sum.

Comment – This option would not take into account different circumstances but would be perceived as fair under age discrimination.

- Applying a multiplier to all cases, e.g. 1.5 or 2.2

Comment – This approach would leave the Council potentially vulnerable under Age Discrimination Regulations unless an objective justification was used.

- Pay no enhancement in cases of interests of efficiency

Comment – This would not provide the required flexibility

5.2 RECOMMENDED that early retirements in the interests of the efficiency of the service and in cases of joint appointments be determined on a case by case basis. Discretion would be used to pay up to 104 weeks pay taking into account individual circumstances and without a specific formula. This may be linked to the use of compromise agreements to protect the councils' interests as appropriate. Objective reasons were required in each case for the award made and should be recorded for audit purposes.

6.0 Transitional Arrangements

If a new early retirement scheme can be agreed in time at this Functions Committee, it is recommended that the new scheme be used rather than adopt transitional arrangements.

7.0 UNISON's views

CMB considered the options and supported the proposals of applying a 1.5 calculator to the redundancy ready reckoner in cases of redundancy and allowing employees discretion to buy additional service in the scheme for the element above the statutory payment where they wished to; and for interests of efficiency of the service cases, using discretion to apply a suitable payment assessed on a case by case basis, UNISON was consulted on these proposals.

Several consultation meetings have been held with UNISON and the matter has been considered within the local branch. Their favoured option is the 2.2 multiplier which would give a maximum potential payment of 66 weeks pay and to review the new scheme when the new Local Government Pension Scheme is due to take effect. The reason they are seeking a review at this time is because in the current draft of the new national Local Government Pension Scheme which, if agreed, would be introduced in April 2008, authorities are given discretion to augment the service of an employee by up to 10 added years although it does not specify the circumstances in which this discretion could be used.

Authorities would remain subject to the Discretionary Compensation Regulations and councils could not apply their discretion in an ageist way; however the local branch of UNISON appears to intend to ask Watford BC to apply this discretion to potentially redundant employees. This would clearly be very expensive. It was agreed to submit UNISON's comments to the committee and they are attached at Appendix 3.

8. **IMPLICATIONS**

8.1 Financial

| Capital Implications | 2004/05 £ | 2005/06 £ | 2006/07 £ | Future Years £ |
|----------------------|--------------|--------------|--------------|-------------------|
| Scheme Description | N/A | N/A | N/A | |
| Less: Budget | | | | |
| Growth / Savings | | | | |

| Revenue Implications | 2003/04 £ | 2004/05 £ | 2005/06 £ | Future Years £ |
|-------------------------|--------------|--------------|--------------|-------------------|
| Cost Centre Description | N/A | N/A | N/A | |
| Employees | | | | |
| Supplies | | | | |
| Etc | | | | |
| Less: Budget | | | | |
| Growth / Savings | | | | |

The Director of Finance comments that example costs for the options presented, based on redundancies in 2005/6, are contained in the report. Actual future costs will depend on the actual number of redundancies.

8.2 Legal Issues (Monitoring Officer)

The Head of Legal services comments that the legal implications are contained within the body of the report

8.3 Staffing

The implications are contained in the report

8.4 Accommodation

There are no implications in this report on accommodation

8.5 Equalities

These are contained in the report

8.6 Community Safety

There are no implications in the report

8.7 Sustainability

There are no implications in this report

8.8 Risks

Not agreeing a revised policy leaves the Council open to claims from employees under the recent Age Discrimination legislation

Appendices

Table -2005/6 redundancies – Appendix 1

Comparison Chart – Appendix 2

UNISON's comments – Appendix 3

Background papers:

LGE Advisory Bulletin No 515

Redundancy and Compensations Policy (LB Hillingdon)

East of England Survey on Compensation Regs.