

BABERGH DISTRICT COUNCIL

FROM: HUMAN RESOURCES PANEL

REPORT NUMBER G 99

TO: STRATEGY COMMITTEE

DATE OF MEETING: 27 September 2007

REVIEW OF COMPENSATION AWARDS ON REDUNDANCY AND EFFICIENCY GROUNDS

1. PURPOSE OF REPORT

- 1.1 The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations, which enabled employers to compensate employees when their employment was terminated on redundancy or on the grounds of interests of efficiency, have changed to comply with the Employment Equality (Age) Regulations 2006.
- 1.2 The Council's policy on Early Voluntary Retirement and Voluntary Redundancy (attached as appendix) is no longer valid because it does not comply with these changes. A new policy needs to be adopted that will comply with the legislation and new Regulations.
- 1.3 This report sets out the options for development and recommends a new policy.

2. RECOMMENDATIONS

- 2.1 That the Council continues paying the statutory redundancy payment on the basis of an actual week's pay,
- 2.2 That the award of added years compensation and the (up to) 66 weeks lump sum compensation in cases of redundancy and interests of efficiency be removed,
- 2.3 That an award of 1 ½ times the statutory redundancy payment as the total compensation in cases of redundancy for all employees with more than 2 years service be introduced,
- 2.4 That the award of compensation in interests of efficiency cases be discontinued.

The Committee is able to resolve this matter

3. FINANCIAL IMPLICATIONS

- 3.1 An early retirement or a redundancy under the proposed scheme will cost the Authority less overall than it would have under the previous scheme.
- 3.2 This is because there will no longer be a pension enhancement as was the case with the Council's previous policy and the maximum redundancy payment (of 45 weeks effectively) is less than the previous 66 weeks maximum.
- 3.3 There will, however, still be the option for the Council to meet the cost of any early payment of pension benefits, but that cost will obviously be less than in the past when enhancement/added years could be given. This could still be appropriate in certain cases in the interests of the efficiency of the service and the Council's overall efficiencies agenda.

4. **RISK MANAGEMENT**

4.1 The report links most closely with Significant Business Risk Nos. 5, Capacity and 7, Comprehensive Spending Review (in relation to efficiencies). Detailed risks are outlined in the table below:

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
<ul style="list-style-type: none"> • The Authority is required to have a scheme which complies with the Equality (Age) Regulations • The compensatory payment level is too generous thereby making it unaffordable for the Authority or it is too low thereby making it an unrealistic option for employees. 	<p>Low - as the proposed policy complies with this legislation</p> <p style="text-align: center;">Low</p>	<p style="text-align: center;">Marginal</p> <p style="text-align: center;">Marginal</p>	<p>Adopting the proposed policy</p> <p>The level recommended in the proposed policy is in line with what has been adopted by the majority of Authorities in the Eastern region</p>

5. **KEY INFORMATION**

5.1 Since 1976 there have been special provisions available to local government employers to make discretionary payments to employees whose employment has been terminated early, either on the grounds of redundancy or in the interests of the efficiency of the service. These discretionary powers were consolidated into the Discretionary Compensation Regulations and have been revoked by the Government and replaced with new regulations to comply with the Age Regulations.

5.2 The discretionary powers previously available to local authorities to compensate employees were to:

- I. Calculate the statutory redundancy payment on an actual weeks pay and not limit it to the ceiling of £290 a week,
- II. Award a one off lump sum payment of up to 66 weeks' pay, based on a service and age related formula
- III. Award added years on top of the benefits payable under the local government pension scheme (LGPS) for eligible employees aged 50 or over and under 65.

5.3 The Council's policy on the operation of these discretions is outlined in the policy attached as an appendix.

- 5.4 It is no longer possible to award compensatory added years. This provision has been removed from the Discretionary Compensation Regulations as it is considered to be discriminatory under the Age Regulations.
- 5.5 The new regulations:
- I. Retain the discretionary power to calculate the statutory redundancy payment on an actual weeks pay and not limit it to the ceiling of £290 a week,
 - II. Provide a discretionary power to award a one off lump sum payment of up to 2 year's pay, inclusive of any redundancy payment made (note the maximum statutory payment for redundancy is based on 30 weeks pay)
 - III. Remove the power to award added years for eligible employees aged 50 or over and under 65.
 - IV Continue to allow early payment of pension benefits for qualifying staff who are redundant or whose employment is terminated in the "interest and efficiency of the service"
- 5.6 The Discretionary Compensation Regulations do not restrict the way any lump sum award is calculated. The Age Regulations however, require that any award should not be discriminatory, subject to a maximum award of 2 years pay.
- 5.7 A number of options and their costs have been considered and advice and guidance has been sought from the Pensions Manager at Suffolk County Council. A local survey conducted by the East of England Regional Assembly has shown that of the respondents within the Region, around half have adopted a multiplier of 1.5 times the statutory redundancy payment, for compensatory redundancy payments, with others adopting multipliers of between 2 and 2.5 times the statutory redundancy payment and one Authority adopted a multiplier of 3.46 times the statutory redundancy payment
- Across Suffolk, the Councils that have adopted a new policy have included compensatory lump sum payments for Redundancy as follows:
- SCC, Mid Suffolk DC, Waveney DC, Ipswich BC - multiplier of 1.5 times the statutory redundancy payment
 - St Edmundsbury - multiplier of 2 times the statutory redundancy payment
 - Suffolk Coastal- a multiplier based on length of service only
- 5.8 With regard to awarding compensation for "interest of efficiency of the service" dismissals, the approach that has been taken across Suffolk Authorities to date is not to award any compensatory payment but to only allow the immediate payment of pension benefits for employees aged 50 and over. Across the Region there are some Authorities that are choosing to develop a compensatory award in these circumstances.
- 5.9 The options available need to balance the costs to the Council alongside a fair compensation payable to staff. Clearly, it is important that any costs are affordable in the light of the financial pressures we are facing. At the same time, it is important to provide reasonable compensation to enable staff to leave on the grounds of redundancy or efficiency when it is of long term gain to the Authority in terms of change management, flexibility and financial savings.
- 5.10 The policy revisions required for redundancy will include the following:
- a) No award of compensatory added years.
 - b) Continue to base the overall lump sum on an actual weeks' pay.
 - c) Employees aged 50 and over will continue to receive the immediate payment of their pension benefits.

HR Panel proposes:

- d) To award an overall lump sum which enhances the redundancy payment to all employees with 2 or more year's service, regardless of age. This multiplier of 1.5 times the statutory redundancy payment is considered most appropriate as this aligns the Council to the majority of Suffolk Authorities which is the preferred outcome given the Pathfinder objectives for Suffolk.
- 5.11 For retirements on interests of efficiency grounds the following provisions appear to be a reasonable way forward and in line with other Authorities in the County:
- e) Not to award compensatory added years.
 - f) Remove the discretion to award a redundancy payment in exceptional circumstances (this option has not been exercised to date),
 - g) Employees aged 50 and over will continue to receive the immediate payment of their pension benefits.
- 5.12 The awards detailed in paragraphs 5.9 and 5.10 above would comply with the Age Regulations. An exception in regulation 33 of the Age Regulations allows employers to pay enhanced redundancy payments. The proposed award on redundancy falls within this criteria.
- 5.13 The LGPS regulations give local authorities the discretion to award additional service to a pension scheme member. However, this would remain an expensive option and would need to be objectively justified under the Age Regulations.
- 5.14 Under the Discretionary Compensation Regulations a policy change cannot become effective until one month has passed since the publication of the amended policy. For this reason it is proposed the implementation date is set one month form the date of adoption by Strategy Committee
- 5.15 The local branch of Unison have been consulted on this policy and a formal response will be circulated separately before or at the meeting.

6. **APPENDICES**

- (A) Policy on Early Voluntary Retirement and Voluntary Redundancy

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**15.6 EARLY VOLUNTARY RETIREMENT
AND VOLUNTARY REDUNDANCY - POLICY**

1. This Policy with its 5 categories of applicants will be operated as a voluntary scheme. The Council reserves the absolute right of approving or not approving each application and there is no right of appeal against a refusal. All applications shall be determined by Strategy Committee.
2. The Policy will operate in 5 categories as listed below:
 - (A) Pensionable employees over 50 years with at least 5 years reckonable service where the employee is also redundant;
 - (B) Early retirement in the interests of the efficiency of the service;
 - (C) Voluntary redundancy of employees who are not in the Local Government Pension Scheme or have no immediate entitlement to pension benefit.
 - (D) Early payment of Pension Benefits; and
 - (E) Added years for Pension Benefits.
3. The provisions for each of the 5 categories are set out below:
 - (A) PENSIONABLE EMPLOYEES OVER 50 YEARS OF AGE WITH AT LEAST 5 YEARS RECKONABLE SERVICE WHERE THE EMPLOYEE IS REDUNDANT
 - (i) Voluntary retirement under this Section may only take place in circumstances where it is deemed by the Council to be for reasons of redundancy.
 - (ii) This part of the Scheme shall apply to employees aged 50 years or over, who have 5 or more years of reckonable superannuable service.
 - (iii) An employee who is permitted to retire early under these provisions will become entitled to draw immediate pension benefits from the Superannuation Fund.
 - (iv) The Council will award a maximum of $6\frac{2}{3}$ added years to count for pension benefits. This will be based on a formula of one for five years Local Government Service, subject to this not bringing the service of an employee to more than he/she would have obtained had he/she retired at 60 years of age. These arrangements will only be varied in exceptional circumstances.
 - (v) The Council will also pay the maximum redundancy payment permitted under the Employment Protection (Consolidation) Act 1978. For the purposes of Redundancy Payments, the actual salary/wage in receipt at the date of termination will be used, as will all continuous Local Government service.

(N.B. It must be noted that benefits received under (iv) above will be reduced by the redundancy payment if the added years under (iv) exceeds six and two-thirds years).

(B) EARLY RETIREMENT IN THE INTERESTS OF THE EFFICIENCY OF THE SERVICE

- (i) This is a voluntary scheme, both from the point of view of the applicant in deciding whether he/she should apply for consideration and of the Council in approving the application or otherwise. Approval or otherwise of the application is entirely at the discretion of the Council where it is deemed by the Council to be in the interests of the efficient exercise of the Council's functions. There is no appeal from such a decision.
- (ii) Save in exceptional circumstances applications will only be considered from employees who are at least 55 years of age, and who have at least 5 years reckonable Local Government service.
- (iii) The guidelines to be used in the consideration of applications are set out below:
 - (a) For an application to be granted, it must be demonstrated that there will be a significant improvement in the efficiency of the Division concerned, or that the retirement will enable a needed re-organisation to take place which will itself lead to a significant improvement in the efficiency of the Division.
 - (b) Consideration may also be given to applications based on the ground that the applicant has reached such an age, or state of mind or health, whereby it is no longer possible for the applicant to perform his/her duties as effectively as is required. Before considering such a step, all practical steps must be taken either by way of counselling, training or re-training as appropriate so as to enable the person to continue in employment. Where it is not possible to take such steps, or such steps have proved ineffective, the details shall be reported to Members. In addition, and where necessary, supporting medical advice shall be obtained.
 - (c) Applications may also be considered on the ground that to grant the application will result in making a job available for a younger person, but in such circumstances the Council will need to be satisfied that the recruitment of a younger member of staff will itself result in a demonstrable improvement in efficiency.
 - (d) Finally, applications may be considered based on the gradual decline of efficiency of the applicant due to age or infirmity, but in such cases it will need to be demonstrated that every practicable step has been taken to improve the situation, and that early retirement is the most effective way of dealing with any problems which may result from this situation.
- (iv) An employee who is permitted to retire early under these provisions, other than in (vii) below, will become entitled to draw immediate pension benefits.

- (v) The Council may award added years to count for superannuation benefits, the number of added years not exceeding the shortest of the following periods:
 - (a) Ten years;
 - (b) A period equivalent in length to the aggregate of an Officer's reckonable and qualifying service;
 - (c) A period which, when added to reckonable service, does not exceed 40 years;
 - (d) A period equivalent in length to the period from the date of early retirement to attainment of age 65;
 - (vi) The Council will determine, on the merits of each case, whether or not added years will be granted. Any added years granted will not exceed the provisions in Category A.
 - (vii) In addition to the above the Council have noted that it has discretion under the Local Government (Compensation for Redundancy) Regulations 1994 to pay single lump sum compensation payments to certain eligible employees who retire early in the interests of the efficient exercise of the authority's functions. To be eligible for the payments employees must be aged between 18 and 49 with at least 2 years Local Government service, or be aged 50 or over with less than 2 years service. Maximum payments are specified according to age and service. Any cases under these provisions will only be considered in exceptional circumstances, and any compensation will be determined on the merits of each case within the limits of the available discretion.
- (C) VOLUNTARY REDUNDANCY OF EMPLOYEES WHO ARE NOT SUPERANNUATED OR HAVE NO IMMEDIATE ENTITLEMENT TO SUPERANNUATION BENEFIT
- (i) In circumstances where employees not in categories (A) and (B) above agree with the Council to take Voluntary Redundancy, the Council will pay the maximum redundancy payment permitted under the Employment Protection (Consolidation) Act 1978. For the purposes of redundancy payments the actual salary/wage paid at the date of termination will be used, as will all continuous Local Government service.
 - (ii) In addition, and where the payment exceeds the redundancy provisions above, the Council will exercise its discretion to pay the maximum single lump sum compensation payment permitted under the Local Government (Compensation for Redundancy) Regulations 1994.
- (D) EARLY PAYMENT OF PENSION BENEFITS
- (i) The Council has discretion to allow an employee aged 50 years or over, to retire early and receive an immediate pension. Where the age and service in the pension scheme totals 85 years or more there will be no reduction in the accrued benefits. Otherwise, the pension will be reduced on an actuarial basis unless the Council determines, on compassionate grounds, there should be no reduction.

- (ii) The Council will consider each application on its own merits.

(E) ADDED YEARS FOR PENSION BENEFITS

- (i) The Council has discretion to grant added years of pension membership for employees, aged 50 years or over, leaving the Council's service. This is an alternative to awarding compensatory added years under the Discretionary Payments Regulations 1996.
- (ii) The Council's policy is that this discretion will not be used, save in exceptional circumstances.

GENERAL

- 4. That in order to assist displaced employees to secure alternative employment, each employee so displaced be granted, where appropriate, a total of up to 5 working days leave, with pay (including average bonus where relevant) to look for alternative employment and attend interviews.
- 5. That, subject to the limits of available resources, all efforts be made to provide an adequate counselling service for employees so displaced to assist them in adapting to the changes taking place.

This policy was adopted by the Council from 1 November 1985 under Minute No. 35 of the Policy and Resources Committee on 10 October 1985. Revised by Minute No. 53 of the Personnel Committee on 2 December 1987, to be effective from 1 January 1988. Further revised by Minute 4 of the Personnel Committee on 12 June 1991. Enhanced benefits under Section C deleted until further notice by Minute 3 of the Personnel Committee on 20 November 1991. Further revised by Minute 28 of the Personnel Committee on 23 September 1992, to remove provision for payment of notice in lieu which will be considered on the merits of each case. Further revised by Minute 47 of the Personnel Committee on 15 March 1995 to take account of the Local Government (Compensation for Redundancy) Regulations 1994. Further revised by Minute 49 of the Personnel Committee on 29 January 1998 to take account of the Council's Pension Fund and financial positions and new discretions under the Pension Scheme Regulations 1997. Revised again under Minute 29(a) of the Council on 14 December 1999 to revise the provisions for awarding added years.