
**STAFFING MATTERS & URGENCY
COMMITTEE**

20 September 2021

Report of the Head of HR & OD

Emergency Retention Protocol

Summary

1. To approve the introduction of an emergency retention protocol, as an urgent response to emerging service critical conditions.

Recommendations

2. The Staffing Matters & Urgency Committee is recommended to:
 - a. Approve the emergency retention protocols detailed within this paper.
 - b. Agree to the development of a retention policy as part of the pay policy.

Reasons for the recommendations

3. To ensure the council is able to retain key skills in the workforce which are under pressure, to meet the Organisational Development Plan.

Options

4. The Staffing Matters & Urgency Committee can chose not to accept the recommendations contained within this report however to do so may result in vacancies in areas leading to pressures on service delivery.

Background

5. We are proposing to introduce a policy for retention payments to address serious retention concerns within the council. Retention concerns are emerging in specific skill shortage areas and professional areas, which are seen nationally and as part of a response to national skills shortage and the covid pandemic.
6. This emergency protocol could assist two areas who have already raised concerns about service pressure and continuity; Children's Services and Waste. However, agreeing to the emergency protocol does not guarantee either of these would meet the necessary criteria, they would still need to be considered properly and have clear justification.
7. As an interim measure and in order to be responsive to the emerging issues, we are asking for consideration of an emergency protocol to enable us to move quickly to respond to immediate issues that are being highlighted but still within an agreed framework.
8. For a number of years the market supplement arrangements have been used for circumstances that were not true market issues and in some instances this was to address concerns about retaining key staff.
9. Retention Policies can be used to address issues where there is a service critical situation or for projects where retaining specific people is crucial to the delivery of the objectives.
10. SMU Committee are asked to approve an emergency protocol for the introduction of retention payments as an urgent response to emerging service critical situations.
11. A formal policy will be produced in conjunction with the trade unions as soon as reasonably practicable should the proposal be agreed, at which stage these arrangements will be superseded.

Proposal

12. The aim of the protocol (and ultimately policy) is to provide a facility to make retention payments to address short term retention and workforce stability issues where serious risks to the effective delivery of high profile, statutory or regulatory services have been identified and where other measure have been assessed and considered not able to address these requirements.

Emergency protocol conditions

13. Payments are for individuals not jobs. The payment aims to provide an incentive to retain specific employees for a particular time frame to mitigate the risk to the council associated with them leaving.
14. Retention payments may not apply to all individuals in a role as they will be targeted to an individual(s) who have the specific knowledge, skills and experience that needs to be retained. The person must be fundamentally important to and have personal impact on the delivery of the service or project.
15. A retention payment will only be made for serious service critical issues and if the following criteria are met;

No.	Criteria	Evidence
1	The service is experiencing pay related retention difficulties in relation to a defined post or posts, and these are having a detrimental impact on service delivery	Turnover data
2	An assurance is received from the service that other non pay related management action has not worked or is not feasible in relation to aiding retention	Chief Officer/Head of Service statement

And/or

No.	Criteria	Evidence
3	The position is key to the successful delivery of a critical time limited project or programme of work and the knowledge, skills and experience required of the post holder are identified as difficult to recruit	Chief Officer/Head of Service statement
4	The time taken to recruit and induct a new recruit would jeopardise the successful delivery of the project or work programme	Chief Officer/Head of Service statement

16. Business case/application must clearly identify the service critical issue, the plan to resolve it and the time frame. It must show what other measures have been considered and why they are not feasible. It must provide the objective justification for payment to the specific individual(s) and how they are critical to the service issue.
17. The service critical situation must be monitored and the steps taken to resolve the issue reviewed regularly at CMT/CCNC.

Payment details

18. Retention payments are not contractual and are entirely discretionary. Payments may be withdrawn or amended at any time.
19. Retention payments are subject to satisfactory performance and attendance. If an individual is subject to disciplinary action, formal performance management or attendance management procedures the retention payment will be withdrawn.
20. Retention payments cannot go beyond 12 months.
21. The annual level of payment will be set at 10% of the individual's basic annual salary. Part time workers will be paid the retention payment pro rata.
22. Unless the payment relates to a critical time limited project, the payment will be split and paid in two six monthly intervals.
23. Authorisation of each payment must be given by the Chief Officer/Head of Service and will occur one month prior to a payment becoming due and will be subject to any conduct, performance and attendance factors above.
24. If the retention payment is related to delivery of specific outcomes or objectives for a project or specific work programme this must be set out in the application and communicated to the individual.

25. No payment will be made if the employee has given notice to resign or is under notice at the date the payment is due.
26. No retention payment will be made to an employee who commences a career break during the agreed retention time frame.
27. Payments are not subject to pay protection.
28. Payments will not count for allowances.
29. Payments will count for pension entitlement

Application and Approval

30. Applications must be made through a business case/ Retention Payment Application Form and approved by:
 - The Departmental Management Team
 - Corporate Management Team (Final approval to sit with the Head of Paid Service and Section 151 Officer)
 - CCNC (Pay Board)

Consultation

31. Consultation has taken place with the council's trade unions representatives prior to the meeting but will be ongoing through the development of a policy. The council's Senior Employment Lawyer has been consulted on the legal issues.
32. CCNC has considered this and whilst supportive request approval from Staffing Matters & Urgency Committee.

Implications

Financial Implication

33. The costs associated with any retention payments will be met by the service area and they must be able to demonstrate that

these are within budget. It is expected that this will be confirmed in the application by the department finance manager.

Equalities Implications

34. There are potential equality implications in the application of these payments but will be address through risk management interventions.

Legal Implications

35. There are potential equal pay and discrimination legal issues associated with introducing any payment that is only applied to certain individuals. It should be noted that irrespective of the title of the payment it would be regarded as a bonus and as such great care must be taken in its application to avoid legal challenge.

36. The legal risks include:

- Equal pay
- Indirect discrimination based on a "provision, criterion or practice" (PCP) that has a disparate adverse impact on gender.
- Unlawful deduction from wages (section 13, ERA 1996).
- Breach of contract.
- Automatically unfair dismissal , if there is a serious breach of contract related to maternity and a female treats herself as constructively dismissed (regulation 20, MPL Regulations and section 99, ERA 1996).
- A claim for pregnancy and maternity discrimination and/or sex discrimination (section 18 EqA 2010.)
- Disability discrimination claim (e.g. s.15 EqA - unfavourable treatment because of something arising in consequence of the disability)

Crime and Disorder, Information Technology and Property

37. none directly arising from this report

Risk Management

38. With regard to potential pay and discrimination issues, having strong criteria for the payment that is as objective as possible will assist in reducing potential for challenge and claims.

39. The application of the arrangements are equally as important and the approval process is a vital part of ensuring proper evidence exists and clearly justifies the agreement of payments.

40. It is essential that the council can show how the agreement of any payment is a "proportionate means of achieving a legitimate aim" in order to give protection from challenge.

41. To elevate the risks from non-payment to individuals who may go on maternity leave or long term sickness absence after a retention payment has been agreed, the proposal is to make any payment in full despite the absence.

42. Whilst in these circumstances the payment has not achieved the objective of retaining the individual in work, for the maternity situation non-payment would not be defensible.

43. The non-payment for long term sickness absence may be defensible if it could clearly be demonstrated that there was no disability issues, however, the council would have to rely on the objective justification test and argue that the unfavourable treatment in question was "a proportionate means of achieving a legitimate aim".

44. There are potentially two further areas of risk identified:

- Public criticism of the use of public funds for awarding retention payments.
- Audit issues with scrutiny of applications and decision making

45. The same mitigation for these risks would apply, that being having clear evidence, sound objectively justifiable reasons for agreeing payments and clearly justifiable decision making.

Author Trudy Forster, Head of HR & OD

Chief Officer responsible for the report: Ian Floyd, Chief Operating Officer

Report **Date** 9 September
Approved 2021

Specialist Implications Officer(s): Janie Berry, Monitoring Officer
Debbie Mitchell, Chief Finance Officer

Wards Affected: *List wards or tick box to indicate all* **All**

For further information please contact the author of the report

Background Papers: None