

Report of the Director of Customer & Business Support Services

Exit and Pension Discretions

Summary

1. This report asks Staffing Matters and Urgency Committee to agree that a number of amendments are made to the way the Council exercises its exit and pension discretions in order to ensure they are fit for purpose for use in a rapidly changing organisation and enable exit costs to be proactively managed.

Background

2. Redundancy pay entitlements are dictated by statute, although it is possible for employers to enhance the statutory provisions. In respect of Local Authorities this can be done in two ways either by increasing redundancy payments directly or through the use of local discretions provided by the Local Government Pension Scheme (LGPS) and Teachers' Pension Scheme (TPS) regulations.
3. Under LGPS rules the employer must have a statement detailing how it will use each of its local discretions and the Council currently operates a redundancy and early retirement policy that enshrines this statement, which was adopted in 2002 and amended in 2006. The purpose of the current policy is to treat all staff fairly, ensure consistency and control costs and the policy does this by adopting a rigid policy provision. The policy also seeks to treat local government and teaching staff equally, subject to their specific pension scheme rules.
4. Given the More for York programme and the need to transform the organisation in the face of increased cost pressures and the likelihood of reduced funding in future, a review of the current policy approach has been undertaken to determine if it is meeting its objectives and is fit for use in a rapidly changing organisation.

Discretions Available and Current Local Provisions

5. A summary of the Council's current policy provisions can be found in annex 1 and the statutory ready reckoner used to calculate redundancy pay can be found in annex 2.
6. As can be seen, effectively the Council's position is that it will not normally use any of its discretions. However, the use of the phrase "not normally awarded"

recognises that there may be instances where it is in the best interests of both the employee and the Council to make use of any of the available discretions and such requests are considered against the following criteria:

- i. exceptional or unusual circumstances;
- ii. the impact on the business unit in question;
- iii. the health of the employee, such as the individual suffers from a serious medical condition but which is insufficient to meet the definition of ill-health retirement under pension scheme regulations;
- iv. the cost, if any, of the early/flexible retirement or award of additional benefits;
- v. personal circumstances or compassionate grounds, for example, the need of the employee to care for a seriously ill relative. Such access will only be granted in the most exceptional of cases;
- vi. demonstrable benefits to the Authority, for example, efficiency reasons and the payback period of any costs;
- vii. any other circumstances which may be relevant to the decision and which may contribute to the more efficient exercise of the Authority's functions.

Current Process

7. In order to ensure that any exceptions to the policy to not normally exercise any discretions are appropriately exercised, properly managed and controlled, a process is in place where a panel consider all requests for the award of discretionary benefits. The panel consists of a minimum of 3 of the following:
 - Director of Customer and Business Support Services (or delegate);
 - Head of HR and Organisational Development (or delegate);
 - HR Corporate Development Manager (or delegate);
 - Pensions Officer.
8. In addition, the current process for agreeing a voluntary redundancy provides for the submission and agreement of a full business case, including details of HR and financial implications, to the relevant service Director and subject to the agreement of the Director of CBSS.

Analysis of Current Position

9. As can be seen the emphasis of the current discretions is very much that they will not be exercised unless there is an unusual and exceptional reason to do so. This has in effect created a rigid system where there are relatively few requests to the aforementioned Panel and even fewer successful applications.

10. The result of the current emphasis and process is that applications are considered purely on the merits of the individual circumstances, rather than in the wider context of the business and the discretions can not be actively used to manage workforce change, only individual cases.

Options

Option 1 – Continue with the existing approach and provisions

Option 2 – Amend the existing approach and amend the existing provisions, allowing flexible application within an overarching governance framework

Analysis

Option 1 – Continue with the existing approach and provisions

11. The statutory and pension scheme provisions detailed above give the Council a large degree of scope to decide locally what severance packages to offer employees. They also provide mechanisms that can be used to flex the workforce, avoid redundancy situations arising and allow for workforce planning to take place over an extended timescale.

12. The current way the Council exercises these discretions is however inflexible and can be counter productive as it does not allow managers to actively manage change, or consider the range of options that should be open to them to do so.

Option 2 – Amend the existing approach and amend the existing provisions, allowing flexible application within an overarching governance framework

13. The Council needs to use its pension discretions in a way that enables and facilitates active workforce decisions that shape the organisation and services, supporting its long term, strategic goals and linking to workforce planning objectives.

14. Taking into account the above, it is proposed that the emphasis on the way the Council exercises its discretions is amended to allow discretions to be used should an overall business case demonstrate they can help the Council achieve its overall financial and workforce objectives.

15. Affordability is clearly a critical factor in any change programme, particularly with the Council necessarily operating within an environment of financial restraint. However a more flexible approach to pension discretions, operating with a framework of actively managed decision making could result in an overall reduction in costs. For example, the current discretions only incentivise those with long service to exit the organisation on the grounds of voluntary redundancy. A policy framework that allows the Council to exercise its discretions on a business case basis, allowing for the award of additional week's pay or augmentation could encourage other employees to volunteer for

redundancy. Such employees are likely to be less costly to exit, saving money, whilst also enabling managers to achieve their workforce planning objectives.

16. Modelled examples of how this may work in practice can be found in the sample business case in annex 5.
17. Notwithstanding, not all are suitable to be exercised in such a way as some will always be prohibitively expensive. The Council will retain the option to exercise these discretions, as at present but with the current emphasis i.e. they will not normally be awarded unless unusual and exceptional circumstances prevail.
18. The following approach to the specific discretions is therefore proposed:
 - i. **Redundancy Payments** - Continue to use Actual Weekly Pay to calculate redundancy pay but revert to using continuous local government service, rather than total (aggregate) service, in the calculation. This is in line with the majority of local authorities.
 - ii. **Discretionary Compensation (104 weeks pay)** – The default number of weeks will remain as the statutory redundancy payment, i.e. a maximum of 30 weeks pay. However, consideration of an additional discretionary element in order to facilitate change will be introduced, which would be considered on a case by case basis. Additional weeks will only be awarded where there is a clearly demonstrated financial benefit.
 - iii. **Augmentation / Award of Additional Pension** – It is recommended that there is no change to current policy, i.e. the Council will not award additional pension benefits unless there are prevailing exceptional circumstances.
 - iv. **Early Retirements in the efficiency of the service** - The Council will make more use of efficiency retirements in order to facilitate change. Such retirements would be considered on a case by case basis.
 - v. **Flexible Retirement** – The Council will use flexible retirement as a change management mechanism. Such retirements would be considered on a case by case basis.
 - vi. **Early retirement** – The Council will use early retirement as a change management mechanism, considering applications on a case by case basis. Each application will also consider the waiving of the actuarial reduction, or otherwise on a case by case basis.
19. It is equally important that all such decisions are subject to proper scrutiny and are only agreed where the relevant business case is made. It is therefore proposed to introduce a standard business case template that must be completed prior to the submission of a revised corporate plan. A proposed template can be found in annex 4 with a completed sample in annex 5.

20. It is proposed that all business cases are initially considered by the relevant Departmental Management Team (DMT) prior to submission to a reconstituted appeals panel, at which the submitting manager would be required to attend to present their case.
21. It is further proposed that the appeals panel is revised to be made up of the following:
 - i. Chief Executive (Chair);
 - ii. Director of CBSS;
 - iii. Head of HR & OD;
 - iv. Pensions Officer;
 - v. One Assistant Director from each of the Council's four directorates;
 - vi. Two trade union representatives in an observational capacity.
22. In order that this new process does not hinder the speed of organisational change it is proposed that monthly meetings are diarised, which can be cancelled should there be no business for consideration.
23. Clearly this is a technical and potentially complicated issue and a revised approach will need to be supported by comprehensive and clear managerial and employee guidelines. In addition a comprehensive training and communication programme will be developed and rolled out, in order that managers and employees are fully informed of the process and associated considerations. It is anticipated that the new process and provisions will come into force on the 1st December 2010.
24. It is important to note that the above process, if adopted will not apply to Chief Officers and the use of exit and pension discretions for this group of staff will continue to be reserved to Staffing Matters and Urgency Committee.

Regional Comparisons

25. Work has taken place through the Regional Employer's Productive Workforce Group to benchmark the Council's current provisions against other Local Authority's in the region.
26. The results of the benchmarking exercise shows that all of the 10 Councils which responded operate their discretions on a business case basis, taking into account the needs of the business and the individual's circumstances.
27. In addition, all of those Council's who responded to the survey do allow flexible retirement, albeit with requests being considered against set criteria such as associated costs and impact on the business.

Consultation

28. This matter has been the subject of consultation at the Corporate Joint Consultation Committee (CJCC) and individual meetings with UNISON and GMB Regional Officers.

29. The views of UNISON and the GMB are as follows:

Approach

30. UNISON have stated that they would welcome changes to the current approach to exit provisions and redundancy discretions. UNISON is opposed to discretions being exercised on a case by case basis as, in their view, such an approach lacks transparency and also leave employees unsure of their entitlements and position. They assert that exercising discretions for one could look like discrimination if not applied consistently for all.

31. UNISON would prefer a set, standard way the Council operates its discretions. However if this is not going to be the approach and decisions are to be made on a business case basis, UNISON consider it to be essential to have a basic minimum standard package with additional discretions above that minimum being considered on a case by case basis. Additionally, UNISON consider that a case by case approach must encompass all decisions to exercise discretion, including those around school based staff which are currently made and funded locally by individual schools. UNISON have expresses a strong view that they will not support a process whereby school based staff and non-school based staff are treated differently.

32. The GMB take the view that discretion within the application of any redundancy payment is not reasonable. A straight forward uniformed approach that is open and transparent would be preferable as this would take away any suspicion of favouritism.

33. The GMB is fully aware that Councils across the Country will be subject to tight budget limits in the future and therefore any spending to increase the exit provisions will have to be justified. The Council should also take into account the view of employees on how they are to be treated. The GMB will strongly support the view that all alternative proposals to avoid compulsory redundancies be considered.

34. The GMB consider that if the council decides to operate a system of discretions which will possibly enhance payment to employees then this should be welcomed in the context that it may reduce the need for compulsory redundancy. These discretions should be applied equally to school based staff and non school based staff. The GMB believe that the Trades Unions should have early involvement in the consultation process and fully involved in the business case before it is put forward to the panel. Two Trades Union observers should be present in the final decision making process.

35. The GMB would welcome any increase in the pension provision as another method of avoiding compulsory redundancies. The GMB understands the

council position concerning spending limits and believe that any increases should be focused on enhanced redundancy payments.

Response: The benefits of moving to a case by case approach are detailed in the main body of the report. If the revised approach is adopted, it is still the intention to operate a standard redundancy pay calculation without any discretions being applied, rather the case by case considerations would apply to any enhancements to that standard package.

Discretions

36. UNISON recognise the financial constraints currently being experienced by all Councils and the subsequent challenges. UNISON are not therefore proposing that the Council makes any changes to how it exercises its pension discretions and that the Council continues to operate the policy that they will not normally be awarded. UNISON are however seeking that the Council operates a fair and reasonable Voluntary Severance scheme as a means of avoiding compulsory redundancies.
37. In this regard UNISON are supportive of the Council retaining the statutory ready reckoner, which calculates the number of weeks pay an employee will receive as redundancy pay as a function of their age and length of service, because payments calculated in this way do not need to be objectively justified under age discrimination legislation. UNISON propose that the Council should consider making enhancements to redundancy pay using the Discretionary Compensation Regulations, which allow for the award of an additional 104 weeks redundancy pay. In this regard UNISON have suggested they would like to see these weeks awarded using a 2.2 times multiplier based on the statutory ready reckoner. This would result in the resulting number of weeks being enhanced by 2.2 times as standard for all employees, subject to a maximum number of 66 weeks for someone with 30 years' plus continuous service.
38. UNISON recognise that the 2.2 multiplier may look generous, but are of the view that by enhancing redundancy payments in this way, the Council would be able to enact redundancies quicker, thus making the related savings earlier. As a result UNISON state that this approach would be cost neutral, as a minimum, when compared to the current approach of not applying any enhancements to encourage volunteers for redundancy and having to make compulsory redundancies due to the time associated with the associated proceedings i.e. statutory consultation, hearing, appeal, seeking redeployment and notice periods.
39. The experience of the GMB suggests the way to limit Compulsory redundancy is to increase the package that is available to employees to encourage volunteers. The GMB believes that the current system will not deliver the number of volunteers that will avoid the need for Compulsory redundancies in the future. The current system is based on statutory redundancy payments inclusive of total pay and should be used as the basic calculator. The system has been objectively justified in accordance with the Age Discrimination Act.

40. The GMB propose that the Council should adopt a system of 2 x the current statutory level with the current arrangements to use total pay. The GMB also propose a payment to enhance this in accordance with the Discretionary Compensation scheme of 104 weeks. The GMB believes that this proposal would increase the number of employees who would consider voluntary redundancy and therefore increase the pool of volunteers for the Council to choose from. This would result in a more efficient streamline system which will enable employees to leave the employment of the City of York Council earlier than going through the full consultation process, it would also take the pressure off large groups of employees going through the consultation and selection criteria process.
41. The GMB also proposes that before any compulsory redundancies are enforced the Council should ask all council employees to indicate if they are interested in voluntary redundancy. This would also further increase the pool of volunteers for the Council to choose from.

Response: The practical operation of operating a multiplier to all redundancy calculations has been modelled as worked examples shown in annex 3. As can be seen, such an approach would increase the costs of redundancy payments in every case regardless of business need or case. It is agreed that the use of discretions can expedite the resolution of redundancy situations, thus enabling savings to be achieved more quickly than if a compulsory redundancy was necessary. Such an approach also has significant benefits in terms of management time and avoiding disruption to services. This is one of the aims of the new approach, although it is proposed to do so on a case by case basis depending on the associated business case. It is current policy for the Council to consider volunteers for redundancy in order to avoid compulsory redundancies where possible and each such volunteer is already looked at on its merits and relative costs.

Review

42. UNISON are requesting that whatever approach is chosen, it is subject to formal, joint review after 6 months of operation.

Response: Any revised process should be subject to regular review so this is supported.

Process

43. In terms of the process itself, UNISON consider that the technical complexities of the pension discretions dictate that staff will need support and assistance and would request that trade union representatives are engaged early in the process where business cases are being considered. This engagement should take place as part of the discussions between employees and their manager and as an absolute minimum before any business case is presented to a DMT. In addition UNISON have stressed the importance of clearly established protocols for the consideration of each application.

Response: Trade union representatives will have already been consulted on any proposals that might lead to a redundancy situation and it is agreed that the early involvement of representatives in subsequent severance discussions would be beneficial and this will be included in the management guidelines.

Approval

44. UNISON have also proposed that if a business case approach is adopted, there should be a limit on the decisions that can be taken by Officers with cases incurring costs of £50k or more, or with a payback time of more than 2 years should be referred to the relevant Executive Member for approval.

Response: All expenditure associated with redundancy and exit arrangements will be reported in the MoreForYork updates and through the associated programme governance and as a result this proposal isn't considered to be necessary. A record of all of the decisions taken by the Panel will however be made and supplied to the Leader of the Council and relevant Executive Members at regular intervals. In addition, all matters relating to Chief Officers will continue to be reserved to Staffing Matters and Urgency Committee.

Corporate Priorities

45. The actions being proposed in this report are designed to support the Council's corporate priority "Effective Organisation" and are consistent with the required outcomes of the More 4 York programme.

Implications

46. This report has the following implications:
- **Financial** - Contained within the body of the report.
 - **Human Resources (HR)** – Contained within the body of the report.
 - **Equalities** – An Equality Impact Assessment (EIA) has been undertaken on this proposed policy change, the outcome of which has been subject to consultation with the Staff Equalities Reference Group. The outcome of the EIA shows a number of measures that can be taken to enable the new process to be fully understood and the equality implications monitored, which will be actioned. These include comprehensive guidance for managers and staff and also the undertaking an annual EIA of the outcomes with an analysis by equality strand to ensure no adverse impact.
 - **Legal** – The Council will need to be able to demonstrate that any revised policy is justifiable, fair and free from age discrimination. This has been considered as part of the EIA work described above. In terms of implementing any changes, changes to discretions which fall under the LGPS regulations must be communicated with Scheme members at least one month before coming into operation.
 - **Crime and Disorder** – no implications.

- **Information Technology (IT)** - no implications.
- **Property** - no implications.
- **Other** - no implications.

Risk Management

47. The specific risks associated with this issue and how they can be mitigated are covered in the main body of the paper. In summary, the risks associated with the recommended option are financial, legal, operational and reputational.

Recommendations

48. It is recommended that Staffing Matters and Urgency Committee:
- agree option 2, to amend the existing approach to exit provisions and pension discretions, allowing flexible application within an overarching governance framework.

Reason: In order that the Council's redundancy policy and pension discretions can be exercised in a flexible way to achieve its organisational change objectives.

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Report Approved

Date 21st September
2010

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Date 21st September
2010

Specialist Implications Officer(s):

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

All

For further information please contact the author of the report

Background Papers:

Annexes

- Annex 1 – Summary of the Council's existing policy provisions
- Annex 2 – Statutory Redundancy Ready Reckoner
- Annex 3 – Worked examples of UNISON's proposal
- Annex 4 – Business case template
- Annex 5 – Sample business case example