
**MANAGEMENT OF CHANGE
SEVERANCE AND PROTECTION PAYMENTS**

Responsible Cabinet Member – Councillor Stephen Harker, Resources Portfolio

Responsible Director – Paul Wildsmith, Director of Corporate Services

Purpose of Report

1. To consider recommendations to assist the management of change within the Council by introducing revised discretionary severance payments for employees whose employment is terminated on redundancy or efficiency grounds and a scheme for salary grade protection for employees who are downgraded as a result of restructuring.

Information and Analysis

2. In 2006, the discretions previously available to local authorities to make compensatory payments to employees whose employment is terminated on redundancy or efficiency grounds were amended under the revised ‘Discretionary Compensation Regulations’ (DCR) 2006. Background information on the DCR is attached at **Appendix 1**.
3. The regulations were largely introduced as a result of age discrimination legislation and as such the discretion to award ‘added years’ for the over 50s has been removed, as this practice is viewed as discriminatory. The revised regulations allow Local Authorities to make discretionary payments where employment is terminated early on redundancy or efficiency of the service up to a maximum of two years’ pay (104 weeks). Previously, it was possible to allow such payments up to 66 weeks’ pay as an alternative to awarding added years. The regulations also allow local authorities to retain the discretionary power to use an employee’s actual week’s pay in calculating redundancy payments, as opposed to the statutory ceiling (currently £310 per week).
4. Although the discretion to award added years for the over 50s has been removed, there is still discretion to increase an employee’s length of membership by using regulation 52 of the Local Government Pension Scheme (LGPS). This can be offered to employees of any age, irrespective of leaving reason (other than ill health). The total amount of augmented membership cannot exceed 10 years, or the period by which the employee’s total LGPS membership falls short of the total membership they would have if they continued in the LGPS until age 65. It is worth noting that there is discretion to allow employees the option of using any enhanced compensatory payment awarded under the revised DCR (outlined in paragraph 3 above but excluding any statutory payment in redundancy cases) to purchase additional membership of the LGPS under regulation 52 if they so wish.

5. In Darlington prior to the recent changes to the DCR, it has been custom and practice in redundancy cases to award three added years to qualifying employees (those over 50 with qualifying pensionable service). The discretion to make a payment of up to 66 weeks' pay as an alternative to awarding added years has not been used since the late 1990s, when it was adopted to facilitate the changes resulting from the Local Government Review (LGR). Efficiency of the service terminations have been dealt with on a case-by-case basis.

Costing Information and Issues for Consideration

6. In considering how to apply the new discretions, most local authorities in the area have basically opted for the following: -
 - (a) using an employee's actual week's pay in calculating redundancy payments
 - (b) applying the discretion for efficiency of the service terminations on a case-by-case basis up to a maximum of 104 weeks' pay
 - (c) not to routinely apply the discretion to augment pensionable service
 - (d) applying the discretion for redundancy payments using the statutory redundancy matrix with a multiplier of up to 2.2 to enhance redundancy entitlement. For most Councils in the area, this brings redundancy payments up to a maximum of 66 weeks' actual pay, depending on the multiplier applied.
7. Applying the discretions (a) (b) above are not an issue for Darlington and will not result in increased costs.
8. In terms of the discretion at (c), the Council has previously reserved the right to grant augmented membership to pensionable employees aged 50 or over only as an alternative to awarding added years. As Council practice has been to award added years for employees in this category, this discretion has effectively not been used to date. However, it is worth noting the position outlined in paragraph 4 i.e. that there is the discretion to allow employees the option of using any enhanced compensatory payment awarded to purchase additional membership of the LGPS under regulation 52 if they so wish
9. Applying the discretion at (d) to enhance redundancy payments beyond the statutory 30-week maximum would have cost implications, depending upon the level of enhancement agreed.
10. Previously in Darlington, severance costs for employees under 50 were contained to the statutory entitlement (but based on the actual week's pay). Costs were incurred by giving added years for the over 50s, which is broadly comparable with a 2.2 enhanced calculator on redundancy.
11. As a result of recent age discrimination legislation, any enhancement agreed has to be applied consistently across the organisation i.e. to employees under and over the age of 50. It should be noted that, although many local authorities within the region have opted to use their discretion to enhance redundancy payments under the DCR, this may well have not been an increased cost for them as many were already using their discretion under previous DCR to award up to 66 weeks' pay as an alternative to awarding added years.

12. It should be noted that release on redundancy for employees under the age of 50 has historically been low. Last year (06/07), five employees under the age of 50 received redundancy payments. However given the current change agenda, this low level of redundancies may increase in the future although it is difficult to predict the age composition of employees affected.
13. The following shows the costs/ savings on variable redundancy options based on last year's early retirement and redundancy levels.

2006/7 Actual Redundancy/ Added Years costs	£140k
Costs using calculator of 2.2	£207k (additional cost of £67k – 48%)
Costs using calculator of 2.0	£188k (additional cost of £48k – 34%)
Costs using calculator of 1.5	£140k (cost neutral)
Costs using statutory table and without added years	£94k (saving £46k -33%)
14. Corporate Management team are of the view the Council should apply the statutory redundancy matrix with a multiplier of 2.2 in the case of redundancy terminations, bringing the maximum payable on redundancy to 66 weeks actual pay.
15. The advantages of applying the 2.2 multiplier are that this would make Darlington comparable with the majority of other local authorities in the region and would assist in implementing change, particularly in the current climate of the Admin. Review and the Darlington & Stockton (D&S) Partnership.
16. In respect of the Partnership, any differential severance payment would also prove particularly problematic in employee relations terms and this issue has already been raised by the trade unions. A reasonable exit package is also part of the overall remuneration and reward and would complement the new terms and conditions implemented under Single Status.
17. The disadvantage is obviously the additional costs in terms of redundancies for employees under the age of 50. This could be significant if the need for larger scale redundancy programmes arises in the future, as it will take longer to realise cost savings, particularly when this is linked to proposed protection arrangements as discussed at paragraphs 25-28. However current practice in seeking to avoid redundancies wherever possible through effective vacancy management and redeployment would be maintained to mitigate any potential increase in costs.
18. CMT were also of the view that the Council should allow employees the option of using any compensatory payment awarded (over and above the statutory redundancy payment) to purchase additional membership of the LGPS under regulation 52 if they feel this is more beneficial to their individual circumstances.
19. The exception in the age regulations to give an enhanced payment based on age and length of service criteria only applies in redundancy cases. However, it is important that the Council retains the flexibility to award an enhanced payment to employees leaving on efficiency grounds, as there may be cases when the Council needs to use this to facilitate organisational change.
20. As such, it is proposed that the Council maintain a flexible approach and pay up to a maximum 104 weeks' salary, based on an actual week's pay, according to the merits of each case. Any decision would naturally need to be authorised by the Director of the

Department concerned, in consultation with the Head of Human Resource Management and one other CMT member, who must ensure that any decisions taken are free from age influence or any other discriminatory factors.

21. It is also proposed that the Council allow employees the option of using any compensatory payment awarded in efficiency cases to purchase additional membership of the LGPS under regulation 52 if they feel this is more beneficial to their individual circumstances.

Schools

22. It should be noted that any discretions applied as a result of the DCR applicable under the LGPS should be applied consistently for all non-teaching staff within Community Schools, for equality purposes.
23. Increased costs would fall either to the Council or individual schools, depending upon who picks up the redundancy bill i.e. the Council or the school, and consultation is scheduled with schools on the issue of enhanced payments under the DCR together with a policy on the funding of redundancy costs.
24. There are also new discretions available under the Teachers Pension Scheme (TPS) which will require consideration following further clarity on their interpretation, which is currently being sought by the Local Government Employers to enable the adoption of an equitable severance packages for all Council employees as far as is possible within relevant terms and conditions.

Protection Payments

25. When Job Evaluation was implemented in 2006 as part of the Council's Single Status Agreement, a three-year salary protection scheme was approved for employees whose overall earnings package decreased as a result of the changes. Prior to Single Status the Council had no salary protection arrangements in place.
26. The current Job Evaluation salary protection scheme expires at the end of June 2009 and after that date the Council will have no protection scheme in place. As part of the Single Status Phase 2 negotiations, the NJC trade unions have requested a scheme of salary protection for employees whose grade is reduced as a result of restructuring and following discussions the following three-year protection scheme has been jointly proposed. Protection applies to salary grade only at the appropriate incremental point. It does not apply to an employees overall earnings package: -
 - (a) 1 year at full salary protection (excluding any salary award due from date of start of protection);
 - (b) 1 year at 50% of difference between old and new salary (excluding any salary award due from date of start of protection);
 - (c) 1 year at 25% of difference between old and new salary (excluding any salary award due from date of start of protection).
27. It is proposed that subject to approval the scheme would become operative from 1st December 2007 and until the expiry of the Job Evaluation protection scheme on 30th June 2009 interim arrangements would apply whereby any employee detrimented by

restructuring would receive full protection of their salary grade point to 30th June 2009 and thereafter balance of 3 year period remaining at appropriate rate on the non Job Evaluation protection rate. Employees in protection will also be offered access to the Council's Redeployment Scheme, as is currently the case with Job Evaluation protection.

28. While introducing these protection arrangements will mean that savings as a result of restructuring and efficiency exercises may take longer to realise, the security that protection will offer is beneficial in employee relations terms and will greatly assist in the implementation of change and will also bring Darlington into line with similar arrangements in other local authorities. The Council's Management of Change policy would need amending to reflect the revised arrangements.

Outcome of Consultation

29. The Corporate Management Team have discussed these proposals as part of discussions on required revisions to the Council's Early Retirement Policy and have agreed all the recommendations given in this report.
30. Members of the Joint Consultative Committee (JCC) will discuss the proposals contained in this report at a special meeting on 9th November 2007. Due to timescales, views from JCC will be fed through to Cabinet members at the meeting.
31. Subject to Cabinet agreement, a report will go to Council on 29th November 2007, detailing the proposed severance and protection payments, together with the consequent revisions to the Council's Early Retirement and Management of Change Policies. The former policy will also include changes relating to the right to request flexible retirement from age 50 and the right to request to work beyond the normal retirement age, with the recommendation that the policy take immediate effect. It is worth noting that there has been one redundancy to date since the revised DCR was introduced, with a further redundancy due to take place prior to Council. Statutory payments will be made as an interim measure and retrospective payments relating to any policy changes can be made within six months of employees' leaving date.

Legal Implications

32. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues that the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Section 17 of the Crime and Disorder Act

33. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

Council Policy Framework

34. The issues contained within this report represent a change to Council policy in terms of how the Council will operate the revised discretions under the DCR.

Decision Deadline

35. For the purpose of the 'call-in' procedure, this represents an urgent matter, as the Council does not currently have an agreed policy in relation to the exercise of the DCR.

Recommendations

36. It is recommended that Cabinet note the following proposals that will be referred to Council for approval and adoption by Darlington Borough Council: -
- (a) to continue to apply the discretion to use an employee's actual week's pay in calculating redundancy and efficiency payments, in line with current practice;
 - (b) to apply the discretion for efficiency of the service terminations on a case- by-case basis up to a maximum of 104 weeks' pay;
 - (c) to apply the discretion for enhanced redundancy payments using the statutory redundancy matrix with a multiplier of 2.2;
 - (d) that any enhanced payment (over and above the statutory redundancy payment) either for redundancy or efficiency of the service terminations can be used to purchase additional membership of the LGPS under regulation 52, if employees feel this is more beneficial to their individual circumstances;
 - (e) that further consultation take place with schools on the application of the DCR for all non-teaching staff and that further assessment be made of the discretions within the Teachers Pension Scheme for application to teaching staff;
 - (f) the implementation of a 3-year salary grade protection scheme for employees who are downgraded as a result of restructuring comprising 1 year at full salary protection, 1 year at 50% of difference between old and new salary and 1 year at 25% of difference between old and new salary.

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Director of Corporate Services

Background Papers

- (i) Local Government Employers (LGE) Advisory Bulletin – Employment Relations no. 515 (June 2006).
- (ii) Information from the LGE on the new Compensation Regulations dated 13th November 2006.
- (iii) Information from NEREO on the application of the DCR by Authorities in the North East dated 18th May 2007.

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Background to the Discretionary Compensation Regulations

1. Local Authorities have discretions to pay compensation to employees whose employment is terminated on redundancy or efficiency or grounds. These are referred to as the Discretionary Compensation Regulations, or 'DCR'.
2. The Council's policy to date has mainly been to give up to three added years' membership of the LGPS to employees aged 50 or over who leave on either redundancy or efficiency grounds. However, this discretion was removed from 1 April 2007, as it was deemed discriminatory under age legislation.
3. The revised DCR allow local authorities to award a one-off lump sum of up to, but not exceeding, two years' pay (104 weeks) in such cases, instead of added years, to employees of any age. This must include any statutory payment to which employees with over two years' continuous service are entitled in redundancy cases.
4. Neighbouring authorities have opted to calculate the number of weeks' salary to give in redundancy cases by using the statutory redundancy matrix (based on age and length of service), with a multiplier of between 2 and 2.2. This means that the maximum number of weeks' payment would be 60/66 weeks respectively.
5. The proposal for Darlington (outlined in the report) uses the statutory redundancy matrix with a multiplier of 2.2, making a maximum payment of up to 66 weeks' salary. As such, any enhanced redundancy payment would include the statutory element.
6. The exception in the age regulations to give an enhanced payment based on age and length of service criteria only applies in *redundancy* cases. Such payments for efficiency terminations are much more likely to be 'one-offs', where it is more appropriate to take individual circumstances into account, although any decision must be free from age influence. The proposal for compensatory payments on efficiency grounds (outlined in the report) aims to give the Council a flexible approach and pay up to a maximum 104 weeks' salary, depending on the merits of each case.
7. As well as the DCR, Local Authorities have also been able to use regulation 52 of the LGPS to increase an employee's length of membership in the scheme (referred to as 'augmentation') and this option remains.
8. This can be offered to employees of any age, irrespective of leaving reason (other than ill health), as long as the employees concerned are active members of the LGPS. However, the Council's policy has previously been to use augmentation *as an alternative to added years and only for employees aged 50 or over*.
9. The total amount of augmented membership cannot exceed 10 years (as from June 2007), or the period by which the employee's total LGPS membership falls short of the total membership they would have if they continued in the Scheme until age 65.
10. It is worth noting that the augmentation provisions would not necessarily be attractive to someone leaving employment who is under the age of 50. This is because payment of any benefits would be deferred until age 60 at the earliest.