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<b>REPORT TO:</b>	<b>FINANCE &amp; MANAGEMENT COMMITTEE</b>	<b>AGENDA ITEM: 11</b>
<b>DATE OF MEETING:</b>	<b>30<sup>th</sup> NOVEMBER 2006</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>HEAD OF HUMAN RESOURCES</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>DAVID CLAMP EXT 5929</b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>Review of Compensation Policies in cases of Early Termination of employment</b>	<b>REF: pers/pension</b>
<b>WARD(S) AFFECTED:</b>	<b>ALL</b>	<b>TERMS OF REFERENCE: FM05</b>

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## **1.0 Recommendations**

- 1.1 That the revised Voluntary Redundancy Scheme is adopted as shown in Appendix 1.
- 1.2 That the revised Premature Retirement on Efficient Exercise Grounds is adopted as shown in Appendix 1.
- 1.3 That the current Voluntary Early Retirement Scheme as shown in Appendix 2 is withdrawn.
- 1.4 That the Redundancy Selection Policy & Procedure is amended to reflect the above recommendations should they be approved.
- 1.5 That a single compensation policy is developed following the introduction of new regulations relating to the Local Government Pension Scheme.
- 1.6 That the Council continues **not** to exercise its discretion to use augmentation powers as provided by the existing Local Government Pension Regulations.

## **2.0 Purpose of Report**

- 2.1 To review the Council's policies concerning redundancy and early termination of employment on the grounds of voluntary early retirement or in the efficiency of the service.

## **3.0 Executive Summary**

- 3.1 The Council's current policies in these areas enable entitlements to compensation payments that were either in line with statutory requirements and/or within the provisions of the Local Government Pension Scheme. With the introduction of Age Discrimination Legislation in October 2006, a review of the Local Government Pension Scheme (LGPS) and its provisions has been ongoing. This has been the subject of difficult negotiations at a national level to determine the final provisions for

a revised Local Government Pension Scheme. The latest position is that Age Regulations covering pension schemes will come into force from 1<sup>st</sup> December 2006.

3.2 Whilst the outcome of this is not yet certain, it is appropriate that measures are put in place to review the Council's existing policies, especially in relation to any reference to age criteria.

#### **4.0 Current provisions**

4.1 The Council has three separate Policies that need to be reviewed. Summaries of the key provisions of each are shown below;

#### **4.2 Voluntary Redundancy Scheme**

- The Council can exercise discretion under the appropriate Compensation Regulations and pay compensation in the form of an enhanced redundancy payment.

##### *Payments*

- Based on actual weeks pay. This is a provision enabled under existing discretionary powers.

##### *Employees over 50*

- Immediate payment of pension but with **no** provision for added years to be awarded.

#### **4.3 Voluntary Early Retirement Scheme**

- Only available to employees aged over 50 with at least two years service.
- Immediate payment of pension benefits
- Employees with over 5 years service may be granted a period of 'added years'. The amount being the least of:
  - Actual service
  - 6 2/3 years
  - Remaining service upto age 65
  - Remaining period up to achieving 40 years Local Govt pensionable service

#### **4.4 Premature retirement on Efficient Exercise Grounds**

- Available to employees who qualify for the early payment of their pension benefits and aged 50 or over at the date of leaving
- Compensation in the form of 'added years' is not granted, although the merits of each case can be considered by the appropriate Committee.

#### **4.5 Redundancy Selection Policy & Procedure**

This procedure does cross-reference with the above policies and will need to be refined to account for any changes. As the payments made relate to statutory

redundancy payments, they will continue to be made in line with the revised statutory scheme in place. The Department for Trade & Industry has issued a revised scheme in this respect. It should be noted that a challenge to the statutory scheme is expected as it continues to base payments on age and length of service. The only changes being made to the statutory scheme are to remove the upper and lower age limits as well as the tapering arrangements that used to apply to workers aged between 64 and 65.

## **5.0 Draft regulations**

5.1 In anticipation of the Age Discrimination Regulations, the Government has published and is consulting on a number of changes to existing discretionary powers available to Councils.

## **5.2 *Current position***

Currently, the key discretionary powers enable;

- A compensation payment to be based on an employee's actual weekly pay rather than the statutory maximum of £290 per week.
- A one-off lump sum payment of up to 66 weeks pay, based on a service and age related formula
- The awarding of added years on top of the benefits payable under the Local Government Pension Scheme for eligible employee's aged 50 or over and under 65. There are limits and conditions that are applied before this discretion can be exercised.

## **5.3 *Proposed changes***

The draft regulations will;

- Retain the entitlement to base a compensation payment on an employee's actual weekly pay.
- Enhance the one-off lump sum payment up to 104 weeks pay (2 years) inclusive of any statutory redundancy payment.
- Remove the power to award added years – although existing provisions enable augmentation of service to be made (see section 7).

5.4 What will remain in the Regulations is the requirement for local authorities to;

'have regard to the extent to which the exercise of their discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service', and

'be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable cost'.

5.5 In addition the view of the Audit Commission is that a 'blanket' approach and the granting 'as of right' of additional enhancements under the Regulations would not achieve those aims stated above. Instead they advocate that a case by case basis assessment is undertaken.

5.6 Finally it is critical to recognise that such policies and in particular the Voluntary Redundancy Scheme are primarily used at very sensitive times. It is important to strike the balance in achieving the ongoing business needs of the Council, comply with appropriate Regulations, maintain effective employee relations and take account on an individual basis, of the particular circumstances of any employee involved.

## **6.0 Proposed changes to the Council's Policies**

6.1 Whilst the application of these Policies over the past few years has been minimal, it is important to bear in mind that the Age Regulations became effective from 1<sup>st</sup> October 2006. Clearly any current criteria related to age has to be withdrawn.

6.2 In addition it is also clear that as compensatory added years are restricted to employees over the age of 50, they are due to be withdrawn under the draft Regulations – planned for 1<sup>st</sup> December 2006.

## **6.3 Voluntary Early Retirement Scheme**

6.4 The Scheme is only made available to employees aged over 50 to reflect the previous conditions of the Local Government Pension Scheme. It is therefore recommended that this scheme is withdrawn and that further work is completed in consultation with the Trades Unions to explore the possibility of an alternative scheme when the new Regulations are made law.

6.5 It should be noted that protection arrangements may be put into place in the new Regulations that may enable employees to receive immediate payment of benefits should they meet certain conditions. This should be considered in the formulation of further policies in this area.

## **6.6 Premature Retirement on Efficient Exercise Grounds**

6.7 The option to provide 'added years' is no longer available and has to be removed from this procedure.

6.8 It is also recommended that the age criterion is removed and the policy is open to all employees.

6.9 In practice this policy has been used on a limited basis with additional compensation awarded on a case by case basis. The exception in the Age Regulations applies only to redundancy payments and an option could be to explore the possibility of agreeing a suitable formula to compensate employees who leave on efficiency grounds or indeed augmentation of service. However, this would need to satisfy the requirements not only of the Local Government Pension Scheme but also avoid any form of discrimination. On balance it is preferable given the limited use of the policy to continue to consider any case on individual merits in light of what options are included in the final pension scheme.

6.10 Subsequently a revised policy has been drafted, but it should be noted that the prospect of it being used in its current form is highly unlikely.

## **6.11 Voluntary Redundancy Scheme**

6.12 No changes to this policy are recommended. The reference to employees being over 50 year of age and their entitlement to immediate benefits from the pension scheme will remain in place for the current time. However, it should be noted that this might

need to be reviewed to reflect the final detail in the revised Regulations. Options that are being considered included raising the age from which benefits may be payable and transitional protection arrangements for existing scheme members.

## **7.0 Augmentation of Service (Regulation 52)**

- 7.1 With the removal of the discretionary power to award compensatory added years the Council may wish to use the augmentation provisions to award extra years of membership in the LGPS. These provisions have been available under the LGPS regulations since 1997. The Council has not determined to use these powers in any of its existing compensatory policies.
- 7.2 In summary the augmentation provisions are available to all employees on appointment. They can only be given to active members of the Local Government Pension Scheme (so this excludes none members who may be older workers) and to retain the benefit the employee must subsequently retire from the same authority. They reflect the removed 'added years' provisions in that employees can be awarded upto 6 2/3rds service or the shortfall to the default retirement age of 65, whichever is the least.
- 7.3 The Council along with many others has largely withdrawn from awarding any enhancements to pensions. Our current policies are clear on this issue. To attempt to put into place a policy that is compliant with Age Discrimination Legislation and at the same time meets the Audit Commission's expectations of being affordable and determined on individual merits would appear extremely difficult.
- 7.4 It is therefore proposed that the Council's position on augmentation of service remains unchanged and it will not use its discretionary powers.
- 7.5 However, this may be something that is given further consideration when the development of a revised policy is being drafted.

## **8.0 Employment Considerations**

- 8.1 There is a need to consider the intent of these policies in terms of meeting the business needs of the Council. Clearly, they are primarily used at time when the Council is considering a change in the way it delivers services to the Community. This could involve for example changing organisational structures resulting in the prospect of redundancies. To ensure that such a difficult process is managed as fairly and effectively as possible, the opportunity to request voluntary leavers is seen as best practice. Naturally, there has to be a form of 'incentive' for employees to voluntarily request to terminate their employment.
- 8.2 Our revised policies are recommended to comply with Age Discrimination Regulations although additional development may be required when the changes to the Pension Scheme are confirmed. It is therefore proposed that further work to develop these policies is undertaken and that consideration is given to any new powers that are made available.
- 8.3 *Consultation*
- 8.4 This report was discussed at the meeting of the Joint Negotiating Group held on 2<sup>nd</sup> November 2006. The Trades Unions have been asked to provide comments on any of the proposed changes ahead of this Committee. It was also agreed that they would be consulted on the development of a revised policy.

## **9.0 Financial Implications**

- 9.1 There are no direct financial implications arising from this report.
- 9.2 To meet the requirements put forward by the Audit Commission, each case will have to be considered on an individual basis by the Committee. Included in the report will be full details on the financial and business implications for the case.

## **10.0 Corporate Implications**

- 10.1 The proposed revisions to the policies will ensure that they remain compliant with Age Discrimination Regulations and within the current provisions of the Local Government Pension Scheme.
- 10.2 It should be recognised that more work will be required following the introduction of other changes to the Local Government Pension Scheme. It is recommended that the opportunity be taken at this time to review the Council Policies relating to compensation payments and to develop a scheme in consultation with the Trades Unions.

## **11.0 Background Papers**

- 11.1 Draft Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.
- 11.2 Age Discrimination Regulations 2006

## VOLUNTARY REDUNDANCY SCHEME (VR)

### Introduction

1. South Derbyshire District Council (the Council) may invite certain employees to volunteer for redundancy under the following provisions.
2. The scheme is available to all employees.
3. The Council agrees to exercise its discretion under the appropriate Compensation Regulations and pay compensation in the form of an enhanced redundancy payment. This entitles the Council to base any payment on actual week's pay
4. All applications are subject to the approval of the Council.
5. The Council may amend or withdraw the Scheme after consultation with the Trade Unions.
6. Application of the Scheme shall be solely at the Council's discretion and confers no rights or entitlements.
7. Annual leave entitlement would normally be limited to that earned up to the date of leaving although separate considerations have to be made for employees on long term absence from work due to ill health.

### Payments

8. (a) To qualify for a redundancy payment employees must have been employed in local government for at least two years.

There is no entitlement to pay under (b) below if, prior to leaving, an employee received an offer of employment in local government or with certain related bodies, which commences within four weeks of the last day of employment.

(b) Employees will receive:

- (i) A statutory redundancy payment and, if applicable,
- (ii) An amount of compensation not exceeding the difference between the amount of the statutory redundancy payment and the amount that would have been payable, but for the imposition of the maximum weekly pay figure.

The total of the above amounts is equivalent to a redundancy payment based on the employee's wage or salary.

9. Pension Entitlement

The existing provisions of the Local Government Pension Scheme (LGPS) enable employees who;

- are aged 50 or over at the date of leaving
- have at least two years pensionable service
- are current members of the LGPS

to have the immediate payment of benefits in accordance with their accrued entitlement. This is an accepted exemption from the Age Discrimination Regulations. Further advice on this matter should be sought from Human Resources.

**PREMATURE RETIREMENT ON EFFICIENT EXERCISE GROUNDS**

1. In cases where it is considered that the interests of the Authority would be best served by a more efficient person in post, an employee may be asked to take early retirement on the grounds of efficient exercise.
2. In certain situations employees themselves may consider that it would be in the interests of both parties if they were to take early retirement on the grounds of efficient exercise.
3. The Scheme is available to all employees of South Derbyshire District Council (the Council) who contribute to the Local Government Pension Scheme.

Note – to qualify for the immediate payment of pension and lump sum, certain criteria need to be met in accordance with the regulations of the Local Government Pension Scheme.

4. All applications are subject to the approval of the Council.
5. Application of the Scheme shall be solely at the Council's discretion and confers no rights or entitlements.
6. Annual leave entitlement would normally be limited to that earned up to the date of leaving although separate considerations have to be made for employees on long term absence from work due to ill health.
7. Employees who meet the appropriate criteria under the Local Government Pension Scheme will receive the immediate payment of pension and lump sum, calculated in accordance with the provisions of the pension scheme. Generally this will be as follows:-

Pension -  $\frac{1}{80}$ th of average salary/pensionable pay during last year x number of years contributory service

Lump Sum -  $\frac{3}{80}$ ths of average salary/pensionable pay during last year x number of years contributory service.

NB: A lower lump sum may be payable to a married, divorced or widowed man who joined the Scheme prior to 1 April 1972.

8. Consideration may also be afforded on an individual basis to exercise other discretionary powers enabled by the Pensions Regulations that are in place. Further advice on this matter should be sought from Human Resources.

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**VOLUNTARY EARLY RETIREMENT SCHEME (VER)**

1. The Scheme will apply to those employees of South Derbyshire District Council (the Council) who will be 50 or over at the date of leaving and who have at least two years' pensionable service and who contribute to the Local Government Scheme.
2. The Council may invite certain employees to volunteer for early retirement. Employees will be required to enter into a formal consensual agreement with the Council which will include mutual agreement as to the date on which the employee will retire. Retirement will be on the grounds of efficient exercise.
3. All applications are subject to the approval of the Council.
4. The Council may amend or withdraw the Scheme after consultation with the trade unions.
5. Application of the Scheme shall be solely at the Council's discretion and confers no rights or entitlements.
6. Annual leave entitlement shall be limited to that earned up to the date of leaving.
7. Employees will receive the immediate payment of pension benefits, calculated in accordance with the provisions of the pension scheme. Generally this will be as follows:-
  - (i) Pension -  $\frac{1}{80}$ th of average salary/pensionable pay during last year x number of years contributory service
  - (ii) Lump Sum –  $\frac{3}{80}$ ths of average salary/pensionable pay during last year x number of years contributory service.

NB: A lower lump sum may be payable to a married, divorced or widowed man who joined the Scheme prior to 1 April 1972.
8. Those employees who have completed five years or more in the pension scheme will be granted a period of "added years" in accordance with the appropriate Compensation Regulations. The amount will be at least of:
  - (a) Actual service
  - (b)  $6\frac{2}{3}$  years
  - (c) Notional service to age 65
  - (d) The period that will bring reckonable service up to 40 years.

Please note that in the case of part-time employees the period of added years will be reduced pro rata.

Revised: P&R Cttee – 20 May 1998