

EAST HERTS COUNCIL

HUMAN RESOURCES COMMITTEE – 7 NOVEMBER 2006

REPORT OF THE CHIEF EXECUTIVE

5. POLICY FOR INCREASED YEARS TO RETIRING EMPLOYEES
UNDER THE PENSION REGULATIONS

WARDS AFFECTED: ALL

'D' RECOMMENDATION – that East Herts Council's policy under regulation 106 of the Local Government Pension Scheme Regulations 1997 be the same as the Council's policy (so far as relevant) under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000.

1.0 Purpose/Summary of report

1.1 Regulation 106 of the Local Government Pension Regulations 1997 (copy at Appendix 'A', page 5.4) requires the Council as a Scheme employer to formulate and keep under review their policy concerning exercise of their functions under regulation 31 (early leavers) and Part III (regulations 51 – 72 inclusive) (Optional Additional Benefits). Heretofore if the Council has awarded added years to an employee, it has been done under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 ("DCR 2000"), but those regulations are to be repealed. In future the only discretion to increase an employee's pension scheme membership will be under pension regulation 52. This report recommends adoption of a policy to accommodate this change.

2.0 Contribution to the Council's corporate objectives

2.1 To deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.

3.0 Information

- 3.1 The new regulations to replace DCR have yet to be made, leaving local authorities with the DCR 2000. Given the prohibition on age discrimination, DCR 2000 now have to be operated in a non-age discriminatory manner.
- 3.2 In East Herts, heretofore employees over 50 at redundancy have been awarded up to 10 added years membership of the pension scheme, to bring the individual's membership up to the maximum of 40 years in the pension scheme. This has been done under DCR 2000. As that element of DCR 2000 could conflict with the prohibition on age discrimination, consideration has been given as to an alternative route. Regulation 52 of the pension regulations offers such a route. Application of the age discrimination provisions to pensions has been deferred until 1 January 2006 so that adoption of this proposal as an interim measure cannot be challenged on these grounds.
- 3.3 In the circumstances, as an interim measure to cover the current situation, it is recommended that the DCR 2000 policy attached at Appendix 'B' (Pages 5.5 - 5.9) be applied as the policy under regulation 106 of the pension regulations for the purpose of any case under regulation 52 (augmentation).

4.0 Financial implications

- 4.1 The costs to the Council of a regulation 52 case are likely to be very similar to a case under DCR 2000; the financial information would be included in a report in every case.

5.0 Legal implications

- 5.1 Legal implications are included in the report.

6.0 Human Resources implications

- 6.1 Agreeing this policy will enable the Council to continue consideration of individual cases as necessary during the period when the prohibition on age discrimination is in force, but not yet applicable to pensions, and when the new discretionary compensation regulations are awaited.

7.0 Risk management implications

7.1 So far as possible, risks are minimised by the proposals.

8.0 Consultation

8.1 UNISON will be invited to comment on the report and any comments received will be reported to the meeting.

Background Papers

None

Contact Officer

Interim Director of Organisational Development – Gerald Balabanoff –
Extn 1650

Information and records

Statements of policy concerning exercise of discretionary functions

106. - (1) Each administering authority and Scheme employer must formulate and keep under review their policy concerning the exercise of their functions under regulation 31 (early leavers) and under Part III.

(2) Before formulating that policy an administering authority must consult the authorities who employ active members for whom they are the appropriate administering authority.

(3) Before the expiry of the period of three months beginning with the commencement date -

(a) each Scheme employer shall send each relevant administering authority, and

(b) each administering authority shall send each relevant Scheme employer,

a written statement as to the policy which is being applied by that employer or, as the case may be, authority in the exercise of its functions on or after that date.

(4) Where, as a result of a review under paragraph (1), a Scheme employer or administering authority determine to amend their policy, they must send a copy of the statement of the amended policy to each relevant administering authority or, as the case may be, relevant Scheme employer before the expiry of the period of one month beginning with the date on which they so determine.

(5) A relevant administering authority, in relation to a Scheme employer, are any authority who are an appropriate administering authority for that employer's employees, and a relevant Scheme employer, in relation to an administering authority, is any Scheme employer for whose employees they are the appropriate administering authority.

(6) In formulating their policy under paragraph (1), an administering authority or Scheme employer must have regard to the extent to which the exercise of the functions could lead to a serious loss of confidence in the public service.

Adopted 13/7/03 minute ref 178

**INTRODUCTION TO EAST HERTFORDSHIRE DISTRICT COUNCIL
POLICY FOR COMPENSATION ON SEVERANCE**

Severance Payments

- 1.1. The Council is obliged to formulate, publish and keep under review a policy for the discretionary award of compensation for loss of office. The relevant regulations are the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000. Regulation 26 of the 2000 Regulations sets out the following requirements:
- (1) Each employing authority must formulate, publish and keep under review –
 - (a) the policy that they apply in the exercise of their discretionary powers under Parts II to IV and Parts VI to VIII [of the 2000 Regulations] and
 - (b) the policy they apply in the exercise of their duty under Regulations 17 and 19 to reduce annual compensation.
 - (2) If the authority decide to change either policy, they must publish a statement of the amended policy within one month of the date of their decision.
 - (3) The authority must not give effect to any policy change until one month has passed since the date of publication of the statement under paragraph (2).
 - (4) In formulating and reviewing their policies, the authority must –
 - (a) have regard to the extent to which the exercise of their discretionary powers (in accordance with the policy), unless properly limited, could lead to a serious loss of confidence in the public service; and
 - (b) be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.”

- 1.2. The Employers' Organisation for Local Government sets out the following nine policy areas that need to be included in the Severance Payments Policy:
- (i) calculating redundancy payments on up to an actual week's pay where this exceeds the statutory week's pay limit
 - (ii) paying a severance lump sum (of up to 66 weeks' pay)
 - (iii) awarding added years
 - (iv) how it will apportion any surviving spouse's annual added years where the deceased person is survived by more than one spouse
 - (v) how will it decide to whom any children's annual added years are to be paid where children's pensions are not payable under the LGPS (because the employee had not joined the LGPS) and, in such a case, how the annual added years will be apportioned amongst the eligible children
 - (vi) whether, in respect of the spouse of a person who ceased employment before 1 April 1998 and where the spouse remarries or cohabits after 1 April 1998, the normal pension suspension rules should be disapplied i.e. whether the spouse's annual added years should continue to be paid
 - (vii) if, under the preceding ... point, the authority's policy is to apply the normal suspension rules, whether the spouse's annual added years should be reinstated after the end of the remarriage or cohabitation
 - (viii) reducing or suspending the member's annual added years during any period of re-employment in local government
 - (ix) reducing the member's annual added years following the cessation of a period of re-employment in local government.

EAST HERTFORDSHIRE DRAFT POLICY FOR COMPENSATION ON SEVERANCE

Due for Approval: 23 July 2003

Due for Publication: 24 July 2003

Due for Implementation: 26 August 2003

A Preamble

- A(i) This policy confers no contractual rights.
- A(ii) The Council retains the right to change the policy at any time.
- A(iii) Only the policy which is current at the time a relevant event occurs to the employee/scheme member will be the one applied to that employee/member.
- A(iv) This policy is approved by the Council as a framework for the subsequent making of individual decisions on redundancy compensation.
- A(v) In coming to this policy the Council has taken into account the Council's wishes:
 - (a) to conduct the Council's affairs prudently and efficiently in the interests of Council Taxpayers;
 - (b) to achieve for the benefit of the taxpayers and the wider community the best value in public expenditure;
 - (c) have excellent working relationships with ongoing employees and their trade unions;
 - (d) to sustain staff morale;
 - (e) to compensate redundant employees with reasonable payments wholly within legal limits;
 - (f) to comply with the Council's equal opportunities policy;
 - (g) to have regard to the extent to which the exercise of the Council's discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service; and
 - (h) to be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.

B Implementation and Equalities

- B(i) In the implementation of every section of this policy, the Council will:
- (a) treat each case on its merits;
 - (b) judge separately the extent to which it is fair and reasonable to apply the general policy to a particular case; and
 - (c) take into account the wider criteria set out in A(v)(a) to A(v)(h) above.
- B(ii) In the implementation of this policy, the Council will always pay close attention to the need not to discriminate against any individual or group of individuals on grounds of their sex, race, ethnic origins, religion or disability and to the need not to compromise without necessary reason the confidentiality of data relating to individuals.

C Actual Week's Pay (Discretion under Reg. 5)

The Council will in suitable individual cases exercise its discretion to make redundancy payments based on the departing employee's actual week's pay, rather than on the statutory maximum applicable elsewhere.

D A Severance Lump Sum

Except where 'Added Years' are awarded under E below, the Council will in suitable individual cases exercise its discretion to pay an additional lump sum severance payment on redundancy. The maximum such payment will be calculated as follows and will be based on the departing employee's age at the date of termination:

- Before age 23: Half a week's pay per complete year of qualifying employment on or after age of 18 plus an additional half a week's pay per complete year of qualifying employment after the age of 20
- Age 23 or after: 2 weeks' pay per complete year of qualifying employment after age 18 plus an additional 3 weeks' pay per complete year of qualifying employment after age 41 subject to a maximum of 66 weeks pay (and subject to the necessary reduction for employees nearing their Normal Retirement Date).

E Awarding Added Years on Pensions

Except where a Severance Lump Sum is awarded under D above, the Council will in suitable individual cases exercise its discretion to award added years ("a credit period") (up to the maximum lawful amount) to employees who qualify for 'a credited period' under Regulation 7.

F Added Years on Pensions – Policies on Subsequent Decisions

- F(i) If Added Years ('a credit period') are awarded on redundancy, the Council will consider upon their merits at the appropriate time (and thus exercise its discretion on each case) the following subsequent circumstances:
- (a) how it will apportion any surviving spouse's annual added years where the deceased person is survived by more than one spouse;
 - (b) how it will decide to whom any children's annual added years are to be paid where children's pensions are not payable under the LGPS (because the employee had not joined the LGPS) and, in such a case, how the annual added years will be apportioned amongst the eligible children;
 - (c) whether, in respect of the spouse of a person who ceased employment before 1 April 1998 and where the spouse remarries or cohabits after 1 April 1998, the normal pension suspension rules should be disapplied i.e. whether the spouse's annual added years should continue to be paid;
 - (d) (if, under F(i)(c) above, the authority has in a particular case applied the normal suspension rules), whether the spouse's annual added years should be reinstated after the end of the remarriage or cohabitation;
- F(ii) If any added years are awarded to a redundant employee, the Employer will consider in every individual case whether it is appropriate to suspend those 'added years' during any period of re-employment in local government;
- F(iii) After any period of suspension under the policy described in F(ii) above, the Employer will consider in every individual case whether it is appropriate for the 'added years' to be reduced after a period of re-employment in local government to make a fair adjustment to a pension increased by further relevant employment.

G Application of the Policy

Individual compensation packages within the Policy above will be settled on behalf of the Council by the Human Resources Sub-Committee.