

EAST HERTS COUNCIL

LOCAL JOINT PANEL – WEDNESDAY 29th NOVEMBER 2006

REPORT BY THE CONSULTANT-INTERIM DIRECTOR OF
ORGANISATIONAL DEVELOPMENT

COMPENSATION ON REDUNDANCY

WARDS AFFECTED: ALL

'D' RECOMMENDATION:

That the Panel recommend the Human Resources Committee:

Either the Policy in this report (paragraph 7) be adopted

or the Sides were not in agreement and that the respective views of both be reported to the Human Resources Committee.

1. East Herts' Council's policies for compensation on redundancy are formally set out in Appendix A. In summary:

(a) for people under 50 at the date of employment termination of their employment and any employees not in the pension scheme, the Council pays cash lump sum of 1 x up to 66 weeks (according to a table in the 2000 Discretionary Compensation Regulations) x actual pay.

(b) For people 50 and over at the date of employment termination and in pension scheme membership cash lump sum of 1 x number of weeks in the statutory redundancy table (Appendix B) x actual pay plus added years or augmentation of pension. Under the 2000 DCR, up to 10 years can be added; under the pension regulations up to 6 years 8 months can be added. The amount to be added is in the Council's discretion. Until recently, it was not uncommon to award the employee his/her personal maximum (to take personal membership up to 40 years).

The last meeting of the Human Resources Committee agreed that, so far as relevant, the policies in Appendix A shall also apply to augmentation under the pension regulations, so East Herts effectively does the same for over 50s whether under the 2000 DCR or the pension regulations. Augmentation under the pension regulations can be awarded to employees at any age (not just over 50s).

2. Earlier this year the Government announced that DCR 2000 were to be withdrawn and new regulations made effective 1st October concurrent with the new prohibition on age discrimination coming into force. Draft regulations were circulated for comment. Owing to late responses to the consultation, the new regulations were only made on 6th November, and come into force on the date of this LJP meeting. As predicated by the draft the new DCR 2006 offer the following options:

- (a) Cash sum of 1 x number of weeks in the statutory redundancy table x up to actual pay with the possibility of up to 6 years 8 months augmentation under pension regulation 52
- (b) Cash sum of 1 x up to 104 weeks x up to actual pay (no augmentation possible). The amount has to be calculated in a non-age discriminatory way, the only way any one knows this can be done is by reference to statutory redundancy table (because the table is specifically exempted from being discriminatory for redundancy purposes by age prohibition regulation 33). As 30 is the maximum number of weeks in the table, local authorities can pay any multiplier between 1 and 3.46 (103.8 weeks).

3. Other points of interest in DCR 2006:

(a) East Herts must make a policy as to how discretion will be exercised under the regulations explained in paragraph 2 above. In formulating and reviewing their policy, the authority must

“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
be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs”.

(b) any new policy is effective 1 month after publication.

(c) Employees in post before 1.10.06 whose employment terminates between 30.10.06 and 1.4.07 can be compensated under DCR 2000.

4. Statutory redundancy pay

(a) Maximum length of service = 20 years, max payment = 30 weeks.

(b) Current max = £290 weekly.

(c) Up to 21: 0.5 weeks for each complete year

(d) 22-40: 1 week for each complete year

(e) 41+: 1.5 week for each complete year.

NB: (1) Service in local government and certain other employers whether in East Herts or elsewhere is continuous service; distinction between East Herts service and service elsewhere is not possible for the issues in this report.

(2) The first £30,000 of redundancy pay is tax free.

5. Options following the DCR 2006 for Redundancy cases:

(a) Some months ago officers circulated a paper to Unison which proposed that under the DCR 2006 East Herts policy on redundancy would be to use only the power explained in 2(b) above: if an employee is made redundant (of any age), s/he would be paid as compensation 2 x statutory redundancy table x actual pay. There would be an option to convert the lump sum (but not 1 x statutory redundancy table x £290 per week which must be paid in cash) into added years, but it is not likely to buy significant service because the cost of doing so needs to cover in advance the capital sum required to fund future pension payments. It needs to be said that for younger staff made redundant, this would be similar to historic practice mentioned in paragraph 1(a) above; on the other hand for older staff this would be significantly less beneficial than historic practice, although for employees 50 and over under the pension regulations their pension would continue to come into payment from employment termination (the cost of early payment falls on East Herts). Management most recently discussed the matter with Unison on 20th November 2006, it is unlikely that management and trade union will reach a negotiated agreement.

(b) Unison's proposal is that redundant employees should be given the option of choosing either (a) or (b) in paragraph 2 above. The union would like the Council to exercise its discretion for employees taking option (a) to award 6 years 8 months augmentation; and for employees taking option (b) to use 3 as the multiplier. Both options would be available for employees of any age.

6. Apart from policy questions, Unison's proposal raises the question of whether it is possible (given the ban on age discrimination) for the same local authority to, for example, apply paragraph 2(a) above (with augmentation) for over 50s and paragraph 2(b) (augmentation excluded) for under 50s. This was put to the Department for Communities and Local Government, which replied:

“Such a policy would certainly be possible purely as far as the new Regs are concerned. However, as you will be aware all employers have to comply with the age-related requirements in the EU Directive. Therefore, whilst your authority *may* be able to sustain such a policy, you would have to make a judgment as to the likelihood of your being challenged in the courts.

If you could make an objective justification for the policy, such as that the opportunities for re-employment locally for the over-50's were demonstrably worse than for the under 50's, this would help your case in the eventuality of challenge”.

7. Comments from the Chief Executive and the Consultant-Interim Director of Organisational Development
 - (a) Compensation should continue to be calculated by reference to actual pay.
 - (b) Augmentation should cease because extending it to under 50s whether by option or in any other way is adding to the very high cost experienced until now only for over 50s (and therefore the Unison option request be declined).
(NB: for employees 50 and over at employment termination, pension comes into payment immediately – this age is rising to 55 probably in 2008).
 - (c) Employees should have the option before employment termination to convert their compensation (excluding that which must be paid in cash) to buy added years.

- (d) Members should determine the multiplier for compensation to apply to all redundant employees, of at least 2 but up to 3.46, using the statutory redundancy table.
- (e) The new policy come into effect one month after publication following the Human Resources Committee and apply to all redundancy notices thereafter until reviewed or amended (any notices heretofore expiring on or before 31.3.07 to be subject to the DCR 2000 and policy thereunder).
- (f) To continue not to offset the statutory redundancy payment against pensions or lump sums which are paid from the pension scheme.

8. Efficiency cases

The provision that the statutory redundancy table can be used to calculate redundancy payments does not apply to efficiency cases. It is suggested that if any such cases arise, the Council should give consideration to each on a one-off basis using the provision to pay up to 104 weeks pay and taking account of the following:

- (a) Overall reasonableness, including benefits to the Council tax payer by the employee leaving the Council's service
- (b) Direct financial savings to be incurred by the employee leaving the Council's service
- (c) Employee relations consideration

9. Conclusion

Historically East Herts has offered generous redundancy packages, particularly to over 50s. In recent years these have become much more expensive, the cost has escalated as employers' pension contribution rates have risen. The Council needs to balance treating employees with dignity and decency with the financial consequences falling on the General Fund. This is not an easy equation. Whatever the Council decides, the policy should be kept under regular review and it would certainly be sensible for officers to report again should it transpire that, for example, East Herts' policy is out of line with policies being adopted by other authorities in the region. As mentioned above, agreement with Unison is unlikely, in the end under the DCR 2006 whilst agreement would be much preferable, the discretion rests with the Human Resources Committee on behalf of the Council.

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Background papers
DCR 2000
DCR 2006
LGPS Regs 1997 as amended

APPENDIX A

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;
 - (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 sustain staff morale; 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.

Appendix B

Service (Years)																			
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Age																			
18*[1]	1																		
19	1	1½																	
20	1	1½	2																
21	1	1½	2	2½															
22	1	1½	2	2½	3														
23	1½	2	2½	3	3½	4													
24	2	2½	3	3½	4	4½	5												
25	2	3	3½	4	4½	5	5½	6											
26	2	3	4	4½	5	5½	6	6½	7										
27	2	3	4	5	5½	6	6½	7	7½	8									
28	2	3	4	5	6	6½	7	7½	8	8½	9								
29	2	3	4	5	6	7	7½	8	8½	9	9½	10							
30	2	3	4	5	6	7	8	8½	9	9½	10	10½	11						
31	2	3	4	5	6	7	8	9	9½	10	10½	11	11½	12					
32	2	3	4	5	6	7	8	9	10	10½	11	11½	12	12½	13				
33	2	3	4	5	6	7	8	9	10	11	11½	12	12½	13	13½	14			
34	2	3	4	5	6	7	8	9	10	11	12	12½	13	13½	14	14½	15		
35	2	3	4	5	6	7	8	9	10	11	12	13	13½	14	14½	15	15½	16	
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14½	15	15½	16	16½	17
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15½	16	16½	17	17½
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16½	17	17½	18
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17½	18	18½

40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18½	19
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19½
42	2½	3½	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
44	3	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½
45	3	4½	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
46	3	4½	6	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½
47	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
48	3	4½	6	7½	9	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½
49	3	4½	6	7½	9	10½	12	13	14	15	16	17	18	19	20	21	22	23	24
50	3	4½	6	7½	9	10½	12	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	24½
51	3	4½	6	7½	9	10½	12	13½	15	16	17	18	19	20	21	22	23	24	25
52	3	4½	6	7½	9	10½	12	13½	15	16½	17½	18½	19½	20½	21½	22½	23½	24½	25½
53	3	4½	6	7½	9	10½	12	13½	15	16½	18	19	20	21	22	23	24	25	26
54	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	20½	21½	22½	23½	24½	25½	26½
55	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22	23	24	25	26	27
56	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	23½	24½	25½	26½	27½
57	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25	26	27	28
58	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	26½	27½	28½
59	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28	29
60	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	29½
61* [2]	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30

18* [1] - It is possible that an individual could start to build up continuous service before age 16, but this is likely to be rare, and therefore we have started Table 2 from age 18.

61* [2] – The same figures should be used when calculating the redundancy payment for a person aged 61 and above.