

APPOINTMENTS COMMITTEE

DATE: 8th April 2024

REPORT OF: Chief Executive

SUBJECT: Discretionary Payments

STATUS: Open

EXECUTIVE SUMMARY:

1. To update the Appointments Committee on the Local Government (early Termination of Employment) (Discretionary Compensation) Regulations 2006.
2. To make recommendations on the next steps in relation to Discretionary Compensation

RECOMMENDATIONS:

1. To delegate to the Chief Executive as Head of Paid Service, authority to create a Discretionary Compensation Policy, to provide clarity on the Council's position, with a yearly review by the Head of Paid Service to ensure it is workable, affordable and reasonable having regard to future costs. Such review to be reported to the Committee.
2. To resolve to apply discretion in relation to Regulation 5 - to waiver the statutory limits on a week's pay for on all cases.
3. To resolve not to apply discretion to award up to 104 weeks' pay as a lump sum compensation payment. However, should an employee make a submission arrange a Committee meeting to consider.

1. BACKGROUND AND ISSUES

- 1.1 Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006 gives powers to employing authorities to award compensation on the termination of employment.
- 1.2 The regulations require that every employer should formulate and publish a statement on how it intends to exercise its discretion under the powers available.
- 1.3 When formulating the policy statement, an employer should 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.
- 1.4 The regulations also require that the employer must satisfy that their policy is workable, affordable, and reasonable having regard to the foreseeable costs.

1.5 REGULATION 5

1.5.1 Regulation 5 gives employers the power to waive the statutory limit on a week's pay when calculating a redundancy payment in accordance with the Employment Rights Act 1996.

1.5.2 Current Council policy (sat within the Redundancy Policy) states that a decision is to be made as to whether to apply discretion is taken by the Appointments Committee, but in all cases it is normal to apply the discretion and waive the statutory limit on a week's pay. The Council caps redundancy payments at £30,000.

1.5.3 Research across the region and advice from Y&HEA shows that all Councils have a separate policy that either waives the statutory limit or doesn't, the majority waiver the statutory limits relating to weeks' pay

1.6. REGULATION 6

1.6.1 Regulation 6 gives the Council the power to award up to 104 weeks' pay as a lump sum compensation payment for the termination of employment on the grounds of redundancy based on the individual case. This compensation is in the form of a lump sum payment made on termination of employment

1.6.2 NELC current policy states that a decision is to be made as to whether to apply discretion is taken by the Appointments Committee, but in all cases it is normal not to apply discretion to award up to 104 weeks lump sum compensation payment.

1.6.3 Research across the regions shows that authorities do not currently exercise their discretion to award up to 104 weeks' pay as a lump sum compensation payment.

2. OPTIONS AND CONSIDERATIONS

2.1 In regard to Regulation 5, the Council could:

2.1.1 Decide not to waiver the statutory limit on a weeks' pay thereby paying the statutory redundancy pay. This would need to be consulted on with the Trade Unions and could have a significant impact on our employee and industrial relations.

2.1.2 Decide to waiver the statutory limits on a weeks' pay.

2.1.3 Make case by case decisions as to whether to apply the discretion.

A policy which provides a case-by-case decision will open up the Council for challenge from Trade Unions and staff. The Council would need to have clear and objective principles and criteria to be able to implement a case-by-case decision making policy.

3. FINANCIAL IMPLICATIONS

- 3.1 The Redundancy Policy and protocol currently requires the Appointments Committee to make decisions, which take into account affordability and the Council's overall financial position in considering any exercising of discretion.

4. LEGAL IMPLICATIONS

- 4.1 Are contained within the report.
- 4.2 Constitutionally, the Chief Executive is delegated responsibility around discretionary payments, where allowed for in Council set policy. It is proposed that the policy be restated to permit this, in line with the recommendations sought.

5. PEOPLE SERVICES IMPLICATIONS

- 5.1 Having a clearly defined policy ensures that the regulations are applied consistently where delegated to do so and consideration given where requests are made to apply discretion away from policy.

6. WARD IMPLICATIONS

None.

7. BACKGROUND PAPERS

Policies on redundancy and early retirement if required.

8. CONTACT OFFICER

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