ITEM NO. 13

21st April 2009 – This report was originally considered in Part 2 as it contained confidential Information. The Unions have now agreed the content and the report can be released to the public.

IMPLEMENTATION EXECUTIVE

19TH MARCH 2008

Severance Arrangements

Purpose

1. To determine the severance pay arrangements to apply in Wiltshire Council.

Background

2. The County Council's initial submission in January 2007 for unitary status "We're ready" and the supplementary submission "Next steps" prepared in March 2007 identified that:-

    2.1 Long term savings of about £18,000,000 are to be achieved in part from rationalisation of services and consequent reduction of staff.

    2.2 Transitional costs on early retirement and redundancies are projected at about £7,000,000.

3. A recruitment and secondment protocol has been implemented with a view to safeguarding the employment opportunities of existing permanent staff. The application of the protocol is indeed reducing, and likely to continue to reduce, the permanent labour force. However, while this contributes to reaching the required level without compulsion, it will be insufficient. Some redundancies will be necessary to develop a workforce which is of the "right size" and the "right sort" as well as to reflect that some jobs may be relocated (e.g. in to the Shared Service Consortium).

4. There will be no national prescription on redundancy and other severance compensation. This is being left to local determination within existing statutory provision.

What Provision Currently Exists?

5. There are two ways by which a local authority can compensate an employee for dismissal on the grounds of redundancy :

   5.1 By augmenting the length of pensionable service under the 1997 Pension Regulations thereby increasing the pension lump sum and annual pension; or

   5.2 By providing a lump sum payment equating to additional weeks of pay under the 2006 Discretionary Compensation Regulations.

6. A local authority can augment pensionable service by up to ten years. Augmentation of pensionable service can only "kick in" at age 50 years (rising to 55 years in 2010). Augmentation of service for those aged below 50 (55 in 2010) becomes a deferred benefit payable when pension is drawn (normally at minimum age of 60 years). The augmentation provisions do not impact upon the payment of redundancy payment which has to be paid in accordance with the statutory formula, (albeit with normal weekly pay available rather than the level of weekly pay prescribed in statute). The augmentation of the pensionable lump sum is not taxable, but the augmentation of the annual pension is liable for tax.

7. Severance arrangements which are age related could be challenged as discriminatory under the 2006 Age Discrimination legislation. There is no case law. However, until and unless the Courts decide otherwise these arrangements appear objectively justifiable. They provide legitimate employment practice and planning such as :-

   - Attracting and retaining staff.
   - Rewarding loyalty.
   - Facilitating service change where necessary.
   - Compensating for the disadvantage which unemployed older workers may face in the labour market.

   This being so, it would be open for the Council to apply augmentation.

8 The Discretionary Compensation Regulations provide for a compensatory lump sum payment of up to 104 weeks, including any statutory redundancy payment otherwise payable, based on normal weekly pay, rather than the level prescribed in statute. The

payment is not age related, i.e. it is available for staff aged below 50 years. The payment is taxable over £30,000.

9. It is not possible to "mix and match" the provisions in respect of any employee. However, a local authority could determine to apply either arrangement to an individual according to personal or organisational circumstances.

10. Under either arrangement there is an immediate effect on the revenue budget. Under augmentation the pension fund has to be compensated and under Discretionary Compensation Regulations the payment has to be made at the date of dismissal.

What Are the Current Arrangements in Wiltshire?

11. The practices among the Wiltshire authorities vary.

11.1 The County Council pays redundancy payment in accordance with the statutory formula but at normal weekly wage and also augments the pensionable service of an employee aged over 50 years by a maximum of five years. (graduated according to length of service).

11.2 Salisbury District Council pays redundancy payment in accordance with the statutory formula but at normal weekly wage and augments pensionable service of all employees aged over 50 by up to five years (again graduated according to length of service, albeit slightly different from the County Council's graduation). Additionally, in respect of employees aged between 40 and 50 years with 20 years service Salisbury pays between 40 and 66 weeks under other compensatory provisions, (although the statutory basis for this is unclear).

11.3 North Wilts District Council, West Wilts District Council and Kennet District Council apply Discretionary Compensation Regulations to all staff aged 21 years and above. However, each uses a different "multiplier" to the number of weeks of pay to which an individual is entitled under the statutory redundancy pay formula.

11.3.1 North Wiltshire District Council apply a multiplier of two providing a possible maximum of sixty weeks pay.

11.3.2 West Wiltshire District Council apply a multiplier of three, providing a possible maximum of ninety weeks pay.

11.3.3 Kennet District Council apply a multiplier of four, providing a maximum of 104 weeks pay, i.e. the maximum permissible under the Regulations.

11.4 These different arrangements provide a different level and nature of financial benefits to the employee and differing costs to the employer.

12. The compensation arrangements adopted by each authority are discretionary. They are not an entitlement and do not constitute a transferable term of employment under TUPE. However, the expectations of staff are likely to be transferred.

What are the Key Considerations in Determining Redundancy and Severance Compensation?

13. In the absence of any national severance scheme for this local government reorganisation the Implementation Executive is now empowered to determine the severance arrangements to apply in the new authority from vesting day. There are a number of considerations.

13.1 The continuation of existing arrangements would provide different levels of benefit to the individual (and costs to the Council) based upon “history”. This would appear inequitable, and would potentially be a breach of equalities legislation.

13.2 If a common level and nature of benefits were to be applied from April 2009, harmonisation downwards would probably have industrial relations implications disaffecting some staff and being strongly opposed by the Unions. Harmonisation upwards would have financial implications.

13.3 Services are being redefined in which structures, jobs and skills required are likely to change. In overall terms, the number of staff required by Wiltshire Council is unlikely to be much below the current aggregate. However, some redundancies are likely :

13.3.1 Particularly among senior and more highly paid staff through rationalisation, e.g. there will no longer be a need for five Chief Executives, or five Section 151 Officers etc.

13.3.2 To ensure that the people with the right skill base are in post to deliver re-designed services. Younger staff are probably more able to develop their skill base and adapt than older workers. (The age distribution of staff across the authorities is shown as an Appendix).

14. The process of shaping the workforce would be facilitated by favourable severance arrangements at and immediately following local government reorganisation.

Affordability

15. In its bid the County Council estimated severance costs at about £7,000, 000. Until structures are developed and appointments made it will not be possible to identify the staff who do not become appointed and whose employment will need to be terminated on the grounds of redundancy. Based upon the examples in Appendix A the financial provision of £7,000,000 would fund the severance costs of about 70 staff with the profile under example (1), about 35 with the profile under (2) about 150 with the profile under (3) and about 650 with the profile under (4).

Providing Choice

16. Employees aged under 50 years are only entitled to a redundancy payment in authorities applying augmentation but for a lump sum payment under the Discretionary Compensation Regulations in authorities which have adopted these. Some employees aged over 50 years may prefer augmentation of pension and others a lump sum payment. Such preferences would reflect individual circumstances and ambitions. It would be possible to give redundant employees the choice. The choice would need to be subject to affordability, e.g. it could be either augmentation of pensionable service or lump sum under the Discretionary Compensation Regulations but at the lower cost to the Authority. As a simple example, the payment of a lump sum under the Discretionary Compensation Regulations may cost £100,000 and augmentation of pension by five years may cost £120,000. The employee could have the ability to chose and might chose augmentation (because it was consistent with their circumstances and ambitions) but with the number of augmented years reduced to the number of years which would cost the authority no more than £100,000, i.e. the same level of expenditure as would have been incurred if payment under Discretionary Compensation Regulations had been chosen.

Proposal

17. It is proposed that :-

17.1 Severance arrangements be adopted specifically for local government reorganisation and be reviewed no later than April 2011.

17.2 Those arrangements to be :

17.2.1 The adoption of the 2006 Discretionary Compensation Regulations based upon a multiplier of four times the number of weeks of pay to which entitled under the statutory redundancy payment scheme (but subject to a maximum 104 weeks) and with use of normal weekly pay; or

17.2.2 Augmentation of reckonable service graduated as follows :-

Less than 5 years reckonable service - no augmentation
5 up to 10 years reckonable service - two years
10 up to 15 years reckonable service - three years
15 up to 20 years reckonable service - four years
20 years and over reckonable service - five years

17.2.3 The application of normal weekly pay in the redundancy payment.

17.3 Employees aged over 50 years who are in the Local Government Pension scheme to be eligible to apply for either the application of 17.2.1 or 17.2.2 as above but with the chosen benefits capped if necessary at the lower cost level to the new authority.

Dismissal on Grounds of Similar Substantial Reason

18. Some dismissals towards changing the size and shape of the workforce may not meet the statutory test of redundancy. Leading Counsel has advised that the dismissal of a County Chief Executive who either does not apply or applies but is not appointed to the post of Chief Executive of the new authority would not meet the redundancy test. The dismissal would therefore not be on the grounds of redundancy but on the grounds of some other substantial reason. In this case the statutory regulations are expected to give a displaced County Chief Executive entitlement to the redundancy package as if the dismissal had been on the grounds of redundancy.

19. However, there may be other dismissals in the interests of shaping the workforce which are for some other substantial reason rather than redundancy but which are not the subject of statutory entitlement to the redundancy package. The maximum available to

an employee in that circumstance would be the application of the Discretionary Compensation Regulations (i.e. the same as for redundancy) or the augmentation of pension but without a redundancy payment. It would be unlawful to make such a payment if the test of redundancy is not met.

20. It is therefore proposed that when the dismissal is on the grounds of some other substantial reason the same provision in respect of Discretionary Compensation Regulations and augmentation apply. However, given the potential disadvantage to an employee it is recommended that the payment chosen should not be based on the lower cost to the employer.

Preparation for Vesting Day

21. Some changes in the workforce in preparation for the new authority may occur before vesting day with some employees having their employment terminated by their existing employer. If that were to happen their compensation would be based upon the arrangements applying in each of the five authorities. In order to promote the consistency which will arise at vesting day by the adoption of this common policy, it is proposed that the Implementation Executive recommend all five authorities to adopt its policy as early as possible.

Consultation with Trade Unions

22. The proposals in this paper have not yet been the subject of any consultation with the Trade Unions. They would need to be. It is therefore proposed that whatever arrangements are adopted in principle by the Implementation Executive should be subject to consultation with the outcome of that consultation reported back at the earliest opportunity.

Recommendation

23. The Implementation Executive is asked to consider the proposals contained in paragraphs 17 and 20.

RICHARD WOODROOFE
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Severance Examples

Aged	59 Years
Service	36 Years
Salary	£50,000
Redundancy Pay	£27,885 (29 Weeks)
Accrued Pension Lump Sum	£67,500
Accrued Annual Pension	£22,500

1. Discretionary Compensation Regulations x 4

a) Benefit to Employee

Discretionary Compensation Regulations Lump Sum	£100,000	
Accrued Pension Lump Sum	£67,500	
Accrued Annual Pension	£22,500	(recurring)

b) Cost to Employer

Discretionary Compensation Lump Sum	£100,000
Capitalisation of Accrued Pension Benefits	£15,000
Total Cost	**£115,000**

2. Augmentation by Five Years

a) Benefit to Employee

Redundancy Payment	£27,885	
Accrued Pension Lump Sum	£67,500	
Accrued Annual Pension	£22,500	(recurring)
Enhanced Lump Sum	£9,375	
Enhanced Annual Pension	£3,125	(recurring)

b) Cost to Employer

Redundancy Pay	£27,885
Capitalisation of Accrued Pension Benefits	£15,000
Capitalisation of Enhanced Pension Benefits	£67,690
Total Cost	**£110,590**

Aged	51 Years
Service	28 Years
Salary	£50,000
Redundancy Pay	£24,040 (25 Weeks)
Accrued Pension Lump sum	£52,500
Accrued Annual Pension	£17,500

1. Discretionary Compensation Regulations x 4

a) <u>Benefit to Employee</u>

Discretionary Compensation Regulations Lump Sum	£96,150	
Accrued Pension Lump Sum	£52,500	
Accrued Annual Pension	£17,500	(recurring)

b) <u>Cost to Employer</u>

Discretionary Compensation Lump Sum	£96,150
Capitalisation of accrued Pension Benefits	£103,000
Total Cost	**£196,150**

2. Augmentation by Five Years

a) <u>Benefit to Employee</u>

Redundancy Payment	£24,040	
Accrued Pension Lump Sum	£52,500	
Accrued Annual Pension	£17,500	(recurring)
Enhanced Lump Sum	£7,500	
Enhanced Annual Pension	£2,500	(recurring)

b) <u>Cost to Employer</u>

Redundancy Pay	£24,040
Capitalisation of accrued Pension Benefits	£103,000
Capitalisation of enhanced Pension Benefits	£61,775
Total Cost	**£188,815**

Aged	45 Years
Service	15 Years
Salary	£35,000
Redundancy Pay	£11,442 (17 Weeks)

1. Discretionary Compensation Regulations x 4

a) Benefit to Employee

Discretionary Compensation Regulations Lump Sum	£45,768

b) Cost to Employer

Discretionary Compensation	£45,678

2. Augmentation of Pension - does not qualify

a) Benefit to Employee

Redundancy Payment	£11,442

b) Cost to Employer

Redundancy Pay	£11,442

Aged	30 Years
Service	10 Years
Salary	£15,000
Redundancy Payment	£2,740 (9.5 Weeks)

1. Discretionary Compensation Regulations x 4

a) Benefit to Employee

Discretionary Compensation Regulations Lump Sum	£10,960

b) Cost to Employer

Discretionary Compensation	£10,960

2. Augmentation of Pension - does not qualify

a) Benefit to Employee

Redundancy Payment	£2,740

b) Cost to Employer

Redundancy Pay	£2,740

Age Profile by Bands Per Authority

Age Band	WWDC Headcount	WWDC %	NWDC Headcount	NWDC %	Kennet Headcount	Kennet %	SDC Headcount	SDC %	WCC Headcount	WCC %	Combined Authority Headcount	Combined Authority %
Under 18	0	0	0	0	23	4.1	5	0.7	0	0.0	28	0.5
18 - 24	19	6.6	16	4.1	105	18.7	90	12.1	169	4.6	399	7.0
25 - 34	78	27.3	83	21.1	94	16.7	131	17.6	587	15.9	973	17.1
35 - 44	78	27.3	117	29.7	131	23.3	187	25.2	907	24.5	1,420	25.0
45 - 54	79	27.6	112	28.4	134	23.8	172	23.1	1,150	31.1	1,647	29.0
55 - 65	31	10.8	65	16.5	64	11.4	142	19.1	823	22.3	1,125	19.8
65+	1	0.3	1	0.3	11	2.0	16	2.2	60	1.6	89	1.6
Total	**286**	**100**	**394**	**100**	**562**	**100**	**743**	**100**	**3,696**	**100**	**5,681**	**100**

APPENDIX B