

Ex-gratia and Honoraria Payments

Purpose of Report

1. To outline the key considerations relating to ex-gratia and honoraria payments.

Background

2. In May 2011 Staffing Policy Committee requested a report reviewing the reasons why Wiltshire Council does not currently make honoraria or ex-gratia payments to employees.
3. Honoraria payments are defined as “payment given to a professional person for services for which fees are not legally or traditionally required”.
4. Ex-gratia payments are defined as “given as a favour or gratuitously where no legal obligation exists”.
5. For Wiltshire Council these terms have in the past been used to refer to payments to individual employees for high performance or undertaking an exceptional piece of work.

Main Considerations for the Council

6. The key reasons why Wiltshire Council do not currently allow honoraria or ex-gratia payments to be made to individuals to recognise high performance are as follows:
 - a) The increased risk to the council of equal pay claims on the grounds of:
 - Inconsistency of access to the payments – the possibility that some departments give them more often than others, some managers do not give them at all, certain groups get excluded (e.g. particular employee groups with protected characteristics)
 - Subjective criteria – who decides what is worthy of a payment? What is expected and what is “over and above” normal expected good performance. Different managers will have different expectations.
 - Issues with favouritism or perceived favouritism from managers.

- A number of legal cases show the risks associated with this type of payment including:
 - *Barker and others v Birmingham City Council* [2006] – women employed on the same pay grade as men were excluded from bonuses paid to the men.
 - *Hinckley & Bosworth Borough Council v Shaw* [2000] - a one off enhancement to pay in order to provide enhanced pension and redundancy payments was held to be ultra vires
 - *Gibb v Maidstone & Tunbridge Wells NHS Trust* [2009] - it was held that the payments made to the employee were really gifts or gratuities disguised as wages.
- b) Budget allocation – there is no budget allocated to these types of payments and some managers may have more scope within their budgets to make these payments than others.
- c) Public and employee perceptions – against the current climate of pay freezes, service reviews, budget cuts it would be difficult to justify additional financial rewards.
- d) The requirement for central monitoring which would be a considerable administrative burden.
- e) Overall effect on morale –some theories (e.g. Herzberg) suggest that giving financial rewards tends to de-motivate those who do not get them more than they motivate those who do get them.
7. Wiltshire Council currently has other measures in place to reward staff:
- Where additional hours are worked we can pay overtime (below Grade I or in exceptional circumstances) or record TOIL;
 - a one off special project can be evaluated via significant differences form and a payment for additional duties be awarded;
 - staff awards for “employee of the month” and “team of the month”
 - publish “compliments” received in the electric wire;
 - staff benefits – discounts etc. arranged for all staff with local businesses.

Consultation

8. The legal services team have been consulted regarding the equal pay impact of ex-gratia and honoraria payments and recommend that they should not be paid.

Environmental Impact of the Proposal

9. None

Equalities Impact of the Proposal

10. The current situation whereby no ex-gratia or honoraria payment are allowed protects the council from equal pay claims.

Risk Assessment

11. None

Options Considered

12. To confirm current practice whereby no ex-gratia or honoraria payments are allowed.
13. To look for other ways, outside of additional salary payments, to recognise staff who managers believe have performed above what is expected of them in their role.
14. To investigate a fully developed performance related bonus scheme with objective criteria, subject to equal pay legislation and with budget allocated to it.

Recommendation

15. That Staffing Policy Committee confirm current practice, whereby no honoraria or ex-gratia payments are made to individuals to recognise high performance.
16. In addition to look for other ways, outside of additional salary payments, to recognise employees who managers believe have performed above what is expected of them in their role.

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The following unpublished documents have been relied on in the preparation of this report: None