

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Committee/Panel:</b>	Employment in Hampshire County Council
<b>Date:</b>	10 November 2016
<b>Title:</b>	Pay and Policy Update
<b>Decision Reference:</b>	7874
<b>Report From:</b>	Director of Corporate Resources

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#### 1. Executive Summary

1.1 The purpose of this report is to:

- update on proposed Government policy changes
- seek agreement that local discretionary pay policy issues are applied; and
- highlight the work required to review the EHCC pay framework to ensure it continues to meet legislative changes whilst supporting the resourcing requirements of the County Council.

#### 2. Government exit proposals:

##### 2.1 £95k exit payment cap

2.2 Provisions in respect of the £95k exit payment cap on the total value of an exit payment made to an individual with redundancy payments and any pension strain charges are contained within the Enterprise Act 2016 following Royal Assent on 4 May 2016. These provisions are not yet in force and at the time of writing, the latest position was that there will be further consultation this autumn on regulations for the £95,000 exit payments cap, so they will not be in force in October as originally anticipated. Following this consultation it is anticipated that regulations will be published and in force in early 2017.

**2.3 Public Sector exit payments recovery for those earning £80,000 or more who return to the public sector within 12 months**

2.4 Primary legislation is in force in the 2015 Small Business, Enterprise and Employment Act for Regulations to be made requiring in certain circumstances the repayment of Public Sector Exit Payments. These provisions are not yet in force and at the time of writing, the latest position was that the Government are, though a specific timescale has not been confirmed, expecting the regulations to be published and in force this year, subject to their passing by both Houses of Parliament under the affirmative process.

**2.5 Further Reforms to Public Sector Exit Payments**

2.6 Additionally the government has consulted on other potential reforms to public sector exit payments which are in addition to the £95,000 cap on exit payments and the recovery provisions for those earnings £80,000 or more. These included:

- Setting the maximum tariff for calculating exit payments
- Capping the maximum number of months' salary that can be used when calculating redundancy payments
- Setting a maximum salary for the calculation of exit payments
- Enabling the amount of lump sum compensation an individual is entitled to receive to be tapered as they get close to the normal pension age or target retirement age of the pension scheme to which they belong, or could belong, in that employment.
- Reducing the cost of employer-funded pension top up payments

2.7 Consultation closed on 3 May 2016, and the Government has now issued its response. The Government believes that applying these upper limits across the schemes will mean there will be greater consistency between the schemes and would bring public sector terms more in line with exit terms more commonly available in the wider economy and is planning to go ahead with its proposals as set out in the original consultation document. Below is a summary of the main points from the Government's response and the next steps that are envisaged:

- A maximum tariff for calculating exit payments of three weeks' pay per year of service. Employers could apply tariff rates below these limits.
- A ceiling of 15 months on the maximum number of months' salary that can be paid as a redundancy payment.
- A maximum salary on which an exit payment can be based. As a starting point the Government will expect this to align with the existing NHS scheme salary limit of £80,000.
- A taper on the amount of lump sum compensation an individual is entitled to receive as they get closer to their normal pension retirement age.
- Action to limit or end employer-funded early access to pension as an exit term. As part of an overall package the Government will consider proposals appropriate to each workforce, including proposals to:
  - cap the amount of employer funded pension 'tops ups'

- remove the ability of employers to make such top ups, or offer greater flexibility to employers to determine the specific circumstances in which they would be available
- increase the minimum age at which an employee is able to receive an employer funded pension top up

However, the Government does not want to introduce a cross-public sector scheme at this time. Instead, the Government proposes that each Government department responsible for a particular workforce will devise its own scheme within the framework. This will be introduced through negotiation with the trade unions, where existing schemes form part of a collective agreement.

Each Government department has until the 26 December 2016 to draw up a scheme following which there will be a period for consultation and negotiation. The Government has said that if a particular workforce fails to have implemented the reforms within 9 months (i.e. by 26 June 2017) it will consider making changes through legislation.

## 2.8 Matters for consideration and LGA plans

The issues are rather different in local government than the rest of the public sector as for most local authority employees, including Hampshire County Council, the redundancy compensation regime is not set out in a collective agreement, but is contained in the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. Each individual employer has to publish a policy on how it exercises its discretions to provide more than the statutory minimum redundancy payment, within the framework provided by these regulations. The Department for Communities and Local Government DCLG will propose appropriate amendments to the regulations to reflect the new framework following which the Council will update its policy.

Pensions legislation will need to be amended in relation to the early release of pension on grounds of redundancy or interests of efficiency. It is not yet clear how changes in this area will develop and clarification is awaited in response to the Government's announcement.

- 2.9 EHCC are asked to note that HCC will incorporate the legislative changes into HCC policies and procedures once agreed by government.

## **3 Further Government Consultation**

### **3.1 Mandatory Gender Pay Gap Reporting for Public Sector Employers**

- 3.2 The Government is currently consulting on gender pay gap reporting requirements, which will apply to all public bodies with 250 or more employees.

- 3.3 The Government have stated that tackling the gender pay gap (GPG) is an absolute priority. Significant progress has already been made towards introducing mandatory gender pay gap reporting for all large private and voluntary sector employers in the UK. The government have conducted two public consultations in relation to the draft regulations being introduced under section 78 of the Equality Act 2010, and will be seeking parliamentary approval for those regulations later this year. The government want to ensure that the public sector also plays a full part in reducing the gender pay gap and therefore intend to introduce the same reporting regime for large public sector employers during 2016-17.
- 3.4 The intention of reporting on this data is that the transparency will cast a light on unfair discrepancies and create the pressure needed to drive change. The new mandatory GPG reporting requirements for the public sector will be based on the same approach that will apply to private and voluntary sector organisations, with different types of organisations collecting and publishing the same GPG data, in order to ensure consistent approaches across all sectors
- 3.5 It is worth noting, particularly given our workforce gender split is 77% female and 23% male that our female workforce are not disadvantaged when returning to work following maternity leave as our policies enable women to return to a role of the same level.
- 3.6 Consultation closed on the 30 September 2016 and a further update will be provided once the findings are reported.
- 3.7 Salary Sacrifice for the provision of benefits in kind**
- 3.8 The Government is currently consulting on limiting the range of benefits in kind (BiKs) that attract income tax and National Insurance Contribution (NICs) advantages when they are provided as part of a salary sacrifice and flexible benefit arrangements. Consultation closes on 19 October 2016.
- 3.9 The scope of the consultation is to explore potential impacts on employers and employees should the government decide to change the way the benefits code applies when a BiK is provided in conjunction with a salary sacrifice or flexible benefit scheme.
- 3.10 The consultation states that employer pension contributions and employer supported childcare (childcare vouchers) are out of scope of any changes.

As an employer, we do not provide any other benefits in kind that would fall within the current scope of this consultation and therefore we expect the impact to be small. The outcome of the consultation will be monitored and EHCC updated if the position changes.

**3.11 Simplification of the tax and National Insurance treatment of termination payments**

- 3.12 Consultation is underway on the government's response to the 2015 consultation on termination payments as well as draft legislation for technical consultation.
- 3.13 The principle proposals under consultation focus on the income tax and National Insurance Contributions (NICs) that are payable on payments in lieu of notice (PILONs) and will have the benefit of removing any confusion about the different rules that apply for payments in lieu of notice. It will also align the rules for income tax and employer NICs so that employer NICs will be payable on payments above £30,000 (which are currently only subject to income tax).
- 3.14 The government has several objectives for the tax and NICs rules on termination payments: the tax system should continue to provide support to those who lose their job; the rules should provide certainty for employees and employers; the rules should be simple; and the rules should be fair and not open to abuse or manipulation.
- 3.15 The scope of the consultation is to explore whether the draft legislation works as intended, and concluded on 4 October 2016. At the time of writing, the findings are awaited and will be incorporated in to relevant policies and practices.

**3.16 Government Consultation on a Fair Deal for public sector worker pensions**

- 3.17 When an employee is transferred from local authority to another provider, the Best Value Staff Transfers (Pensions Direction) 2007 provides the right for them to acquire pension benefits that are the same as, or count as being broadly comparable to, or better than those that they had as an employee of the authority.

The government has proposed that Local Government Pension Scheme Regulations 2013 are amended in order to contain provisions to permit all transferring members to remain in the Scheme. Amendments are also suggested to aid clarity in application of the 2013 LGPS regulations.

The consultation response from the Local Government Association has now been received and is currently being analysed. EHCC will be updated on any impact of these changes.

**3.18 Teachers' Pensions Consultation**

- 3.19 There is a live consultation in relation to amendments to the Teachers' Pensions Regulations 2010 and Teachers' Pensions Scheme Regulations 2014. These are technical changes to ensure the scheme is operating as was originally intended. The changes relate specifically to ill-health retirement, serious ill-health commutation, phased retirement in relation to irregular workers and other

minor technical amendments. The outcome of the consultation will be monitored and EHCC updated of any significant changes.

#### **4 Pay award update**

4.1 As agreed the 2016 national pay award has been applied to staff on EHCC terms and conditions and Chief Officers in August, backdated to 1 April 2016. In order to fit with technology requirements the salary bandings have been rounded up in order that the total salary can be divisible by 12.

4.2 During the process of implementation the discretionary policy approach regarding those staff who transferred to HCC under the terms of TUPE or a statutory transfer (e.g. Public Health) was rolled forward in accordance with practice as applied in previous pay awards. The rationale for each was reviewed and considered to still be appropriate; but for the purposes of absolute clarity and policy authorisation this is outlined below;

TUPE & Public Health employees:

The HCC policy is to apply the EHCC pay award to those employees who have transferred to HCC on a TUPE transfer or statutory transfer unless the terms of the transfer agreement expressly say something different. This is a relatively small cohort of staff given that in many cases staff have since been moved to EHCC terms and conditions and that this continues to be our preferred approach.

EHCC are asked to agree that the above will continue to be the standard approach for all future pay awards.

4.3 EHCC are also asked to note that an additional pay claim from UNISON for 2017/18 was received by the Employers on 13 October 2016. This follows their Local Government Conference and consultation with their members and seeks an additional flat rate increase of £1 an hour for all NJC pay points.

A response on behalf of the National Employers has been sent stating that the Employers are not willing to consider this new pay claim and are of the view that an agreement on pay was reached on 16 May 2016 that covers the 2 year period 2016 - 2018. Concerns were also expressed about the future of national bargaining in light of UNISON's action.

#### **4.4 Future developments**

As part of the 2016-18 national pay deal the National Joint Committee (NJC) agreed to conduct a review of the NJC pay spine. The primary reason for this review is the introduction of the National Living Wage (NLW). It is the NJC's aim that this review be concluded by 30 June 2017. Before any final agreement is reached, the proposed restructured pay spine will be subject to full consultation with councils and union members.

HCC has its own pay framework and does not use the NJC pay spine. However, the introduction of the NLW poses the same challenges for the EHCC pay

framework as it does for the NJC pay spine. A review of the HCC pay framework will similarly be carried out. Any proposed changes to HCC's pay framework will need to be considered in context of the proposed restructured NJC pay spine. Further updates will be provided to this committee as appropriate.

## **5 Recommendations**

### **5.1 EHCC are asked to approve:**

- a) That, in line with HCC policy, the EHCC pay award continues to be applied to those employees who have transferred to HCC on a TUPE transfer or statutory transfer unless the terms of the transfer agreement expressly say something different. .

EHCC are asked to note:

- b) Legislative changes will be incorporated into HCC policies once agreed by government
- c) The successful implementation of the 2016 pay award and the rounding up of the pay awards to enable a fit with technology requirements
- d) UNISONS additional pay claim for 2017/18
- e) Following the introduction of the NLW a review of both the NJC pay spine and HCC's pay framework will be carried out to ensure it continues to meet legislative requirements, that the overall framework remain viable given the significant changes to the lower grade pay scales and that it enables the Councils resourcing priorities.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

These government proposals do not link to the Corporate Strategy but potentially impact the County Council's workforce strategy.

**Other Significant Links****Links to previous Member decisions:**

<u>Title</u>	<u>Reference</u>	<u>Date</u>
Update on proposed Government policy changes	6988	11 November 2015
Update on Government proposed policy changes	7325	9 March 2016
2016 National Pay Award and National Living Wage	7338	9 March 2016

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None.

## IMPACT ASSESSMENTS

### 1. Equality

1.1 The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**Due regard in this context involves having due regard in particular to:**

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

### 1.2 Equalities Impact Assessment:

It is too early to determine whether there is any equalities impact, as the government have not published the full details of these proposed policy changes.

### 2. Impact on Crime and Disorder:

2.1 Not applicable.

### 3. Climate Change:

(a) How does what is being proposed impact on our carbon footprint / energy consumption?

Not applicable.

(b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Not applicable.