

TONBRIDGE & MALLING BOROUGH COUNCIL

GENERAL PURPOSES COMMITTEE

28 October 2010

Report of the Central Services Director

Part 1- Public

Matters for Recommendation to Council

1 UPDATING OF THE EMPLOYMENT STABILITY POLICY

Executive Summary

This report sets out the need for changes to the Council's current policy for compensating staff that leave the organisation due to redundancy, or on the grounds of the efficiency of the service. The current policy is attached as Attachment 1 to this report. The recommended revised policy is attached as Attachment 2. The changes have been made following consultation with the Officer Working Group of the Joint Consultative Committee on 23 September 2010.

- 1.1.1 The results of an Equality Impact Assessment on the Council's Employment Stability Policy, shown in the table at the end of this report, confirm that, under the terms of the Age Discrimination Regulations 2006, Section 4:2:1 of the current Employment Stability Policy discriminates against those approaching or above the Council's normal age for retirement, and Section 6 which sets out the terms for compensation is also potentially age discriminatory.
- 1.1.2 The revised policy has had removed all references to offering voluntary retirement for those approaching retirement age, and the retirement of those close to or above the normal retirement date (i.e. Sections 4:2:1 of the current policy). In addition to this amendment, Section 6 of the revised policy reflects the fact that the legislation to which it refers has been superseded.
- 1.1.3 The policy also needs to specify a non discriminatory framework for the levels of compensation that are awarded to employees who are made redundant. Compensation in the current policy allows for the adding of pensionable service ("added years") for pension scheme members, and a redundancy payment in the case of all staff.
- 1.1.4 Regulation 12 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 allows the Council the discretion to award enhanced benefits of up to 6 2/3 years to employees over minimum pension age, (currently 55). This Council is unique in Kent in the granting of this discretion and, given the discriminatory effect that it has and the very high costs associated with it, it is felt that the discretion to

add pensionable years of service should be removed from the policy with immediate effect.

- 1.1.5 The reference in the policy to the Local Government (Early Termination of Employment)(Discretionary Compensation) Regulations 2006, confers the discretionary power to award employees a one-off lump sum of up to a maximum of 104 weeks pay (inclusive of any statutory redundancy payment) where employment is terminated early by reason of redundancy or efficiency.
- 1.1.6 The same legislation also provides the discretion for the Council to waive the weekly pay ceiling placed on statutory redundancy payments (currently £380 per week) and to calculate payments using actual weekly pay. Throughout Kent, councils have (and continue to) exercised this discretion.
- 1.1.7 In order to be protected from future claims of age discrimination all other Kent councils have adopted the Government's statutory formula for the calculation of redundancy payment, enhanced in a few cases by a 'multiplier'. In determining the scale of the payment to be made in the revised Employment Stability Policy, Members will want to be mindful of balancing affordability with the recognition of service of those to whom the payment might apply.
- 1.1.8 The majority of Kent authorities have opted to make redundancy payments using the number of weeks prescribed by the statutory redundancy scheme and apply no multiplying factor. Those that do apply a multiplier are currently reviewing their policies.
- 1.1.9 These issues were discussed at the meeting of the Officer Working Group of the Joint Consultative Committee on 23 September 2010 (minutes in Attachment 3) and staff representatives were requested to seek comments from all staff.
- 1.1.10 The comments received suggest that there is an understandable level of disappointment about the proposals to reduce the compensation package by the removal of 'added years' and a general feeling that a standard redundancy payment does not fully reflect, what was felt should be, the Council's recognition of the departing member of staff. There was strong support for redundancy payments to be based on an individual's actual week's pay.
- 1.1.11 Unison expressed the view that the removal of the option for the Council to award up to 6 2/3 years added years to an individual's "pension pot" in a redundancy compensation settlement represented another erosion of the "package " available to employees, and observed that this had come in relatively quick succession to the withdrawal of the PPP Health Insurance Scheme. Unison also noted that appropriate support, such as training in job search skills, would continue to be offered to those who were in the unfortunate position of being made redundant. Unison would however monitor very closely the application of the revised policy to ensure that employees who were at risk of being made redundant, or those who did actually depart were supported and did not "fall through the net".

1.1.12 Taking into account the staff's comments, recognising the practice amongst other Kent authorities, and having mind to the affordability of the policy, it is felt appropriate that payments should be calculated using the Government's statutory redundancy payment calculator formula and the employee's actual week's pay for those who are made redundant or depart on the grounds of the efficiency of the service.

1.2 Legal Implications

1.2.1 The Employment Stability Policy needs to be updated to reflect changes in relevant legislation that have occurred since the policy was originally adopted.

1.3 Financial and Value for Money Considerations

1.3.1 Members are invited to reflect upon the proposed recommendations for changes to the existing policy in the light of the current economic climate, public perception, and the challenges facing the Council's financial position.

1.4 Risk Assessment

1.4.1 There is financial and reputational risk to the Council and staff if the current policy is not amended. The terms under which redundancy compensation is awarded should be brought into line with current equality legislation and the level of compensation awarded should reflect the need to protect employment whilst not appearing to be publicly unreasonable.

1.5 Equality Impact Assessment

1.5.1 See 'Screening for equality impacts' table at end of report

1.6 Recommendations

1.6.1 **It is recommended that the attached revised Employment Stability Policy be adopted:**

i) removing the 'adding' of years to pensionable service, and

ii) that payments should be calculated using the Government's statutory redundancy payment calculator formula and the employee's actual week's pay for those who are made redundant or depart on the grounds of the efficiency of the service.

Background papers:

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Nil

Julie Beilby
Central Services Director

Screening for equality impacts:		
Question	Answer	Explanation
a. Has an equality impact assessment on the policy (to which the activity relates) already been carried out?	Yes	March 2010
b. Is the decision in line with the policy?	Yes	
Note: <i>If the answer is 'no' to either of the above questions, then the activity must be 'screened' for equality impacts using the questions below.</i>		
c. Does the activity have potential to cause adverse impact or discriminate against different groups in the community?	Yes	Under the terms of the Age Discrimination Regulations 2006, Section 4:2:1 of the current policy potentially discriminates against those approaching or above the Council's normal retirement date. Section 6 of the current policy potentially discriminates against all age bands of staff.
Note: <i>If the answer is 'yes' to any of the above questions, then a full equality impact assessment is required.</i>		

When a full equality impact assessment is required:	
Note: <i>If this is an interim report seeking clarification or guidance, then this section should be deleted and details included in the main report; if a final report, then questions e and f below should be filled in.</i>	
Question	Answer
d. Please provide a summary of the impacts	If the policy were not to be amended, there could be a considerable financial cost to the Council of unfair dismissal claims on the grounds of age discrimination.
e. What weight do the equality impacts have with regard to other factors relating to the decision?	There is a compelling case for amending the policy.