

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Chief Executive

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NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.

Contact: Committee Services
committee.services@tmbs.co.uk

25 September 2015

To: MEMBERS OF THE GENERAL PURPOSES COMMITTEE
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the General Purposes Committee to be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Monday, 5th October, 2015 commencing at 7.30 pm

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

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MEMBERSHIP

Cllr Ms S V Spence (Chairman)
Cllr P F Bolt (Vice-Chairman)

Cllr M A C Balfour
Cllr Mrs S Bell
Cllr M A Coffin
Cllr Mrs S M Hall
Cllr N J Heslop
Cllr D Markham

Cllr S C Perry
Cllr H S Rogers
Cllr R V Roud
Cllr C P Smith
Cllr M Taylor
Cllr T C Walker

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Apologies for absence

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Declarations of interest

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TONBRIDGE AND MALLING BOROUGH COUNCIL

GENERAL PURPOSES COMMITTEE

Monday, 29th June, 2015

Present: Cllr Ms S V Spence (Chairman), Cllr P F Bolt (Vice-Chairman), Cllr M A C Balfour, Cllr M A Coffin, Cllr Mrs S M Hall, Cllr N J Heslop, Cllr S C Perry, Cllr H S Rogers, Cllr R V Roud, Cllr C P Smith, Cllr M Taylor and Cllr T C Walker

Councillors Mrs J A Anderson, O C Baldock and Mrs M F Heslop were also present pursuant to Council Procedure Rule No 15.21.

PART 1 - PUBLIC

GP 15/10 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct. However, in relation to the item on Draft Recommendations for New Electoral Arrangements for KCC, Councillors Balfour and Smith reminded the Committee that they were members of Kent County Council.

GP 15/11 MINUTES

RESOLVED: That the Minutes of the meeting of the General Purposes Committee held on 2 February 2015 be approved as a correct record and signed by the Chairman.

MATTERS FOR RECOMMENDATION TO THE COUNCIL

GP 15/12 HUMAN RESOURCES STRATEGY UPDATE

The report of the Director of Central Services updated the Committee on progress in achieving the improvement priorities in the Human Resources Strategy for 2014/15 and identified actions to be implemented in the period April 2015 – March 2016. The updated strategy also contained the statutory equality monitoring required by the Equality Act 2010.

The Committee acknowledged the professional skills of the human resources team during challenging circumstances and recorded thanks to the Personnel and Development Manager and the Personnel and Customer Services Manager for all their work.

RECOMMENDED: That the outcomes of the equality monitoring reported in Section 4 of the Human Resources Strategy, as set out in



Annex 1 to the report, be noted and the actions listed in Section 5 thereof be commended to the Council.

*** Referred to Council**

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

GP 15/13 RESPONSE TO PUBLIC CONSULTATION ON DRAFT RECOMMENDATIONS ON NEW ELECTORAL ARRANGEMENTS FOR KENT COUNTY COUNCIL

Further to Minute GP 15/5, the report of the Chief Executive gave details of the Local Government Boundary Commission for England's (LGBCE) draft recommendations on the new electoral arrangements for Kent County Council which had been published for public consultation. It was noted that the proposals affecting the Tonbridge and Malling area retained the number of county councillors at 7 but suggested that Ditton parish be split between Malling Central division and Malling North East. A further change involved Stansted parish being moved to Malling West.

Consideration was given to a suggested response to be made to the LGBCE by the 6 July 2015 deadline. Whilst supporting the move of Stansted to Malling West, concern was expressed that splitting Ditton between two county divisions would lead to confusion for electors and would not be conducive to effective or convenient local government.

RESOLVED: That the response to the LGBCE consultation, as set out at paragraph 1.3.1 of the report, be approved.

GP 15/14 ANNUAL REVIEW OF WHISTLEBLOWING CHARTER

The report of the Director of Finance and Transformation gave details of the outcome of a review of the Whistleblowing Charter which had identified a number of amendments to bring the charter in line with best practice. Consideration was given to a revised draft which it was proposed should be referred to as the Whistleblowing Policy to correspond with other Council policy documents. The Committee was advised that the Policy covered councillors, employees and contractors.

It was noted that the Policy had been considered by the Audit Committee on 7 April 2015 and commended for endorsement. Members sought clarification of where councillors should initially report concerns and it was suggested that they should be directed to one of the three statutory officers.

RESOLVED: That the draft Whistleblowing Policy set out at Annex 1 to the report be approved subject to the inclusion in section 6.2 of a provision for councillors to raise any concern in the first instance with the Chief Executive, Monitoring Officer or Section 151 Officer.

GP 15/15 SHARED PARENTAL LEAVE POLICY

The report of the Director of Central Services advised that the Shared Parental Leave Regulations 2014 came into effect on 1 December 2014 and gave details of a proposed Policy to inform employees of their rights and responsibilities should they wish to take Shared Parental Leave and statutory Shared Parental Pay.

Whilst the majority of the Policy reflected the largely prescriptive terms of the legislation, attention was drawn to two areas of employer discretion. These included the right to refuse a request for discontinuous leave and whether to match Shared Parental Pay (ShPP) with that of the Maternity Pay Scheme. It was noted that the Policy as presented recognised contractual pay for ShPP purposes thereby avoiding unequal treatment. Members were advised that the proposed Policy had been reported to the Joint Employee Consultative Committee (Operational Working Group).

RESOLVED: That the Shared Parental Leave Policy set out at the Annex to the report be approved.

MATTERS SUBMITTED FOR INFORMATION**GP 15/16 OFFICE OF SURVEILLANCE COMMISSIONERS - INSPECTION REPORT, THE REGULATION OF INVESTIGATORY POWERS ACT 2000**

Further to Minute GP 13/025, the report of the Director of Central Services referred to reviews undertaken by the Office of Surveillance Commissioners (OSC) to ensure that public authorities carried out covert activities in a lawful manner. Details were given of the outcome of a review at the offices on 18 November 2014 when the Inspector confirmed that the single recommendation from the last inspection had been addressed. He had concluded that the Council did not frequently utilise the powers vested under the Regulation of Investigatory Powers Act, had good policies and procedures in place and had undertaken appropriate training. Accordingly, no formal recommendation had been made.

RESOLVED: That the report be received and noted.

MATTERS FOR CONSIDERATION IN PRIVATE**GP 15/17 EXCLUSION OF PRESS AND PUBLIC**

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE**DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION****GP 15/18 ESTABLISHMENT CHANGES**

The report of the Management Team presented for approval a number of establishment changes arising from the on-going operational management of the Council's services. It was noted that the proposals would result in permanent base budget savings of £25,133 per annum that could be carried forward into the Medium Term Financial Strategy.

Members were advised that where appropriate Unison had been consulted and was content with the proposals. Detailed recommendations for staffing in the newly configured Transportation and Planning Policy teams would be presented for consideration at the next meeting of the Committee.

RESOLVED: That the following proposals and establishment adjustments be endorsed:

- (1) Post DA0304 Democratic Services Officer be regraded from 5/6 to M9 with effect from 6 July 2015;
- (2) Post DV0201 be redesignated from Healthy Living Co-ordinator to Health Improvement Manager and regraded from SO to M8 with effect from 6 July 2015;
- (3) Post DG2012 be redesignated from Senior Waste Services Inspector to Waste Services Manager (Operations) and regraded from 6/SO to M9 with effect from 6 July 2015;
- (4) Post DF0209 Senior Accountancy Assistant be regraded from 5/6 to SO with effect from 6 July 2015;
- (5) the redesignation of Post DR0303 Land Charges Officer to a permanent position be confirmed;
- (6) the reduction in hours of Post DG0101 Senior Parks Officer from 37 to 22 hours per week be confirmed;
- (7) the reduction in hours of Post DG0110 Administrator/Assistant Cemetery Registrar from 30 to 22 hours per week be confirmed;
- (8) the creation of Post DG0102 Assistant Parks Officer at scale 3 be confirmed;

- (9) the increase in hours of Post DV0202 Health Improvement Assistant from 30 to 37 hours per week until 31 March 2016 be noted;
- (10) the increase in hours of Post DV0203 Health Improvement Assistant from 20 to 30 hours per week until 31 March 2016 be noted;
- (11) the increase in hours of Post DJ0125 Systems Support Assistant from 30 to 37 hours per week be noted;
- (12) the commencement of a review of shared service models appropriate for the revenue and benefits function with Gravesham Borough Council via the Finance, Innovation and Property Advisory Board be supported and the consequent staff consultation be endorsed;
- (13) the principle of a shared service agreement with Gravesham Borough Council and the aspiration to introduce this by 2017/18 be noted;
- (14) the continuation of a shared working agreement with Gravesham Borough Council for the services of a Revenue and Benefits Manager be approved;
- (15) the creation of a new post of Financial Services Manager grade M5 be confirmed and, following a ring-fenced selection process, it be noted that Mr Paul Worden will be appointed to the post on 6 July 2015 and thereafter the Principal Accountant Post DF0203 that he currently occupies will be deleted;
- (16) the Street Scene and Leisure directorate be renamed Street Scene, Leisure and Technical Services and the job title of the director be redesignated Director of Street Scene, Leisure and Technical Services with effect from 6 July 2015;
- (17) Post DE002 be redesignated from Chief Engineer to Head of Technical Services and relocated within the Street Scene, Leisure and Technical Services directorate, and the appointment of Mr Andy Edwards to the role with effect from 6 July 2015 be noted and thereafter Post DE0201 (Principal Engineer) be deleted;
- (18) Post DE0101 (Principal Engineer) be deleted on 2 October 2015 and it be confirmed that the contract of Mr Steve Medlock be terminated on that date on the grounds of redundancy and that in accordance with the Local Government Pension Regulations he should commence receipt of his pension from 3 October 2015

and his redundancy pay should be calculated as set out in the Reorganisation, Redundancy and Redeployment Procedure;

- (19) a sum of £88,500 from the overall savings in respect of the recommendations set out in (17) and (18) be ring-fenced for future operational adjustments; and
- (20) the net contribution of £25,133 towards future savings targets be noted.

The meeting ended at 8.45 pm

TONBRIDGE & MALLING BOROUGH COUNCIL

GENERAL PURPOSES COMMITTEE

05 October 2015

Joint report of the Leader and Chief Executive

Part 1- Public

Matters for Information

1 RESPONSE TO HMT CONSULTATION ON A PUBLIC SECTOR EXIT PAYMENT CAP

Executive Summary

In accordance with a Manifesto commitment, on 31 July the Government announced a consultation over its proposals to cap the total amount of redundancy and other exit payments that can be made to individuals leaving the public sector to £95,000. The closing date for responses to the consultation was 27 August. A full version of the consultation is available on <https://www.gov.uk/government/consultations/consultation-on-a-public-sector-exit-payment-cap/consultation-on-a-public-sector-exit-payment-cap>

As the proposed cap has potentially significant implications for the council as an employer, it was felt important to respond to the consultation. However, due to the timing of the consultation (in August), there was no opportunity for this matter to be brought to this committee. Therefore the proposals were considered by a representative group of key members consisting of The Leader, The Deputy Executive Leader/Cabinet Member for Finance, Innovation and Property/Chair of the Joint Employee Consultative Committee, The Chair of the Overview and Scrutiny Committee, The Chair of the General Purposes Committee and The Leader of the Opposition. Their agreed response is set out in Annex A. This report summarises the proposals set out in the consultation and the council's response to them.

1.1 Scope of the consultation

1.1.1 With a small number of exemptions, all government departments and local government organisations (such as this council), as well as non-financial public corporations would be within the scope of the consultation.

1.1.2 The proposal is that the £95,000 cap would include the aggregate of; redundancy payment, pay in lieu of notice and payment of outstanding annual leave entitlement (all of which are contractual), as well as severance payments (very

rarely agreed within this authority). Officers were asked to assess the potential impact of this cap. They confirmed that it will be possible for this council to remain within the £95,000 cap without running the risk of breach of contract, in all but very unusual circumstances (such as significant levels of outstanding annual leave entitlement for employees on long term sick leave). This is because this council has already taken prudent measures to reduce the level of redundancy payment (i.e. the removal of the ability for the council to buy additional years' pension contributions, and the cessation of a "multiplier" for redundancy entitlement). Therefore, as Members will discern from the responses in Annex A, the council broadly supports the £95,000 cap (on the basis that this will be reviewed periodically). We understand that this is not the case in many authorities, including some in Kent.

- 1.1.3 The consultation also sought responses as to whether to include within the cap the employer cost of funding early access to unreduced pensions for employees within the Local Government Pension Scheme (referred to in the consultation as "the strain cost"). Unlike most other public service pension schemes, the Local Government Pension Scheme sets out a **statutory** entitlement to an unreduced pension for employees aged over 55 who leave employment on grounds of redundancy. This is because the LGPS is a funded pension scheme to which the employee and the employer have already contributed in roughly a one-third/two-thirds proportion.
- 1.1.4 The consultation is unclear about what would happen in circumstances where the cap was exceeded as a result of the strain payment, but does allude to a further consultation concerning reforms to the LGPS. No timescale is given for this.
- 1.1.5 As will be discerned from Annex A, the council as an employer does not support the proposal to include the strain cost within the £95,000 cap, for the reasons set out in the responses. In summary, such a move is currently unlawful, highly likely to be discriminatory (on the grounds of age), and would impact adversely on the council's ability to retain and recruit suitably experienced and qualified staff. Furthermore, according to figures from the independent pension administrators Aon Hewitt, the inclusion of the strain cost in the £95,000 cap would, for example, be breached in the event of a LGPS member facing early retirement on the grounds of a redundancy dismissal with 30 years' service and final pay of £39,000. This illustrates that the potential inclusion of the strain cost in the cap would impact on a wide range of middle ranking employees and would thus disproportionately disadvantage local government employees when compared to those in other public sector organisations.
- 1.1.6 The consultation recognises that there may be legitimate exceptions to the £95,000 cap and authorities will be required to publish a policy on the circumstances where this could be considered. All exemptions would then be published in the authority's annual Statement of Accounts. These two proposals are supported in the response set out in Annex A.

1.2 Legal Implications

- 1.2.1 We are aware from an article in the Municipal Journal that the response to the consultation has been highly critical of the proposals, and that one representative body, (the Association of Local Authority Chief Executives - ALACE), has stated “ALACE has grave misgivings about the legal soundness of these proposals and will be seriously exploring – potentially in conjunction with other trade unions - the scope for legal action, including judicial review.”

1.3 Financial and Value for Money Considerations

- 1.3.1 It is clear that there is still much detail to be fleshed out as to how an exit payment cap would actually work in practice. This will be closely monitored to ensure that any recommendations to this committee for changes to the council’s establishment will not only take cognisance of the cap, but will also be structured so as to avoid potential claims for breach of contract, and/or discrimination, and potentially high levels of compensation payments awarded through the Tribunal process.

1.4 Risk Assessment

- 1.4.1 Assuming that, eventually, a cap is set for exit payments the council will structure the “Waiver Policy” to mitigate against the risk of unlawful dismissals.

Background papers:

contact: Delia Gordon

Nil

Julie Beilby
Chief Executive

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Consultation on Exit Payment Cap

This is the response from **Tonbridge & Malling Borough Council**.

Introduction

In view of the significant potential impacts on this Council of the proposals outlined in this consultation, it is disappointing that the response time is only four weeks, and that the timing falls within the “summer break” when we will be holding a bare minimum of meetings. Of necessity therefore the proposals have been considered by a small, but representative group of key members namely:

The Leader

The Deputy Executive Leader/ Cabinet Member for Finance, Innovation and Property
/Chair of the Joint Employee Consultative Committee

The Chair of the Overview & Scrutiny Committee

The Chair of the General Purposes Committee

The Leader of the Opposition.

The response set out below to the questions posed within the consultation constitutes our joint response on behalf of the Council as an employer.

In summary

This Council supports the majority of the proposals set out in the consultation, most particularly the proposal to limit exit payments, as set out in the list “Which payments for recovery” to £95,000, on the grounds of “value for money to the taxpayer”. Indeed, this approach reflects this Council’s prudent approach to exit payments including:

- the removal of the facility to add years to pension entitlements, and,
- the abolition of the multiplier to redundancy payments.

As an employer we consider it to be of great significance that all such steps have been fully supported by the staff side within the context of a shared endeavour to address the financial challenges facing the Council.

However, the Council does not support the proposal to include within the £95,000 cap the actuarial cost to the Local Government Pension Scheme of early retirement on the grounds of redundancy or efficiency of the service for employees aged 55+ (referred to below as the strain cost). This is currently unlawful, would breach the Council’s psychological contract with its workforce that has stood us in very good stead over many years – most specifically in dealing with unforeseen emergencies such as flooding. It would also impact adversely on our ability to retain much valued employees and to recruit, in particular, to posts requiring professionally qualified staff. Furthermore we believe the proposal to include the strain cost to the LGPS for employees aged 55+ whose employment has been terminated on the grounds of redundancy or

efficiency of the service within the proposed cap, could potentially be discriminatory. We have set out our concerns in greater detail in our responses to the questions below.

Question 1: What other forms of exit costs do you think are relevant in this context?

None identified.

Question 2: Do you agree that the government should introduce a cap on the value of public sector exit payments on the basis set out above?

The Council supports the general ethos of the proposals set out in the consultation document and the overall aim of offering value for money to the tax payer in the calculation of “exit payments”, which actually reflects our own approach². In recent years we have introduced many changes to various HR policies to ensure that exit payments are proportionate and supported by a defensible business case. Furthermore, we do not have a voluntary redundancy scheme, and have only very rarely (once within the past 15 years), needed to utilise the early retirement on the grounds of the efficiency of the service provisions within the Local Government Pension Scheme

However, this Council has a major concern with the proposal to include within the cap the cost to the employer of funding early access to unreduced pensions for members of the Local Government Pension Scheme (the LGPS) aged 55+ whose employment has terminated on the grounds of redundancy (the strain cost). The consultation acknowledges that this is a specific entitlement within the LGPS Regulations and proposes that employees would retain the right to take the unreduced pension immediately, but the consultation is not clear about what would happen in circumstances where the cap was exceeded as a result of the strain payment that this Council would need to make to the LGPS. Given that there is a **statutory entitlement** to immediate and unreduced benefits in the circumstances outlined above, **this Council does not support this particular proposal**. We have noted that the consultation appears to tacitly acknowledge our concern about potential legal challenge in that both the Summary and Section 3:3 contain the sentence “the Government is therefore considering further reforms to the calculation of compensation terms and to employer funded early retirement in circumstances of redundancy. The Government plans to consult on possible measures in these areas in due course”.

This Council welcomes the opportunity to comment on any proposed “further reforms” to the provisions of the LGPS “in due course”.

Question 3: Do you agree that the payments listed above should be subject to a cap on exit payments under the terms set out above? If you believe certain payment types should be excluded please provide a rationale and examples.

This Council supports the inclusion of the items listed in Section 4:1 in a cap on exit payments. We also endorse the proposal to exclude compensation payments in respect of death or injury attributable to the employment, as well as payments made following litigation for breach of contract or unfair dismissal (indeed we believe there is little “choice” in such circumstances).

This Council also supports the proposal to exclude from the cap the cost of serious ill health and ill health retirement. It is this Council’s view that this provision is perceived by those Council employees who are members of the LGPS as offering significant “peace of mind” if unforeseen health problems arise.

As an employer we believe that such a sense of security provides an invaluable tool in attempting to retain the services of highly skilled, experienced and highly qualified employees, particularly in the South East where there is significant competition for such employees from within both the public and private sectors. For this reason we would also have a concern about including within the cap the employer cost for eligible staff aged 55+ of early release of LGPS benefits where the reason for the dismissal is on the grounds of redundancy. The basis of our concern is that the funding arrangements for the LGPS are such that both the departing employee and the Council have **already contributed** to this entitlement in roughly a one-third/two-thirds proportion over a number of years and, the sense of security it has provided has been a mainstay of the psychological contract between the Council as an employer and its workforce, many of whom could very probably secure higher base salaries in employment in the private sector in either London or elsewhere in the South East..

Whilst we acknowledge the need for change given the financial challenges ahead, for a Council that has already faced severe difficulties in recruiting professionally qualified staff we are concerned that any erosion of the benefits of the LGPS could adversely affect our ability to retain suitably qualified and experienced staff and, if they leave, to recruit suitable replacements.

Question 4: Are there further payments that the government should include?

None identified.

Question 5: Do you agree that a cap on exit payments should be set at £95,000? If you think an alternative level would be more appropriate, please provide evidence and analysis to support your proposal.

We broadly agree with the proposed level of the cap with the proviso **that it does not include the strain cost of the early release of pension benefits in redundancy scenarios** as set out in our response to questions 2 and 3 above. This Council is concerned that such a proposal would disproportionately impact upon Local Government Employees who are member of the LGPS when compared with staff in other public sector organisations whose pension schemes are not “funded”.

According to figures from Aon Hewitt, the £95,000 limit would be breached in the following examples of LGPS members facing early retirement on the grounds of redundancy dismissal:

A member with 30 years' service and final pay of £39,000

A member with 10 years' service and final pay of £75,000

We doubt that this is the sort of payment the Government is looking to limit. As set out earlier the individual would have contributed themselves through the employee contribution about one third of the total cost of the pension, Furthermore, this Council has a robust approach to handling reorganisations and restructurings to the extent that the Council would not be advocating a redundancy scenario unless it had a coherent business case in which the Council would be making a saving.

Question 6: Are there other ways to ensure such arrangements are consistent with the cap on lump sum payments?

This Council is of the view that the limit needs to apply to severance payments **not early retirements in cases of redundancy** for the reasons set out above.

Question 7: Do you agree with the proposed approach of limiting early retirement benefits with reference to the cost for the employer? What alternative approaches would you suggest and why?

Section 3.1 in the consultation document refers to "early access to reduced benefits" and we wonder whether there is an element of confusion with early retirement due to redundancy. This Council's HR policies are such that there is very limited scope now for staff accessing their pension benefits other than due to redundancy and where an individual does opt to take their pension benefits in any other circumstances (other than ill-health) there are swingeing actuarial reductions made to the benefits paid, and so there is no cost to the employer.

Question 8: Do you agree that the government has established the correct scope for the implementation of this policy?

As outlined above we understand why the consultation specifies that compensation payments made following litigation for breach of contract or unfair dismissals are included in the cap. However, the inclusion in the cap of voluntary exits with compensation packages may present a further potential unintended consequence as illustrated below.

In a scenario in which someone agreed to go voluntarily following what is technically referred to as a 'protected conversation' the consultation appears to propose that their settlement payment would be subject to a maximum of £95,000. However, depending upon the specific circumstances, some individuals may decide that they

could potentially secure a greater settlement via the Employment Tribunal process, or, given the high cost of defending Tribunal cases, potentially the final cost of the settlement plus the costs of the Council defending its position, could exceed £95,000.

By way of context we wish to point out that due to balanced and considered approaches to addressing staffing issues this Council has not “within living memory” been required to defend a case at an Employment Tribunal. Furthermore, this Council has very rarely had the need to reach a settlement, and where it has the settlement figure has been way below the proposed £95,000 cap. It is therefore not anticipated that the unintended consequence scenarios outlined above will happen. However, we think it would be prudent to allow for such scenarios within the proposed “waiver process” outlined on page 13 of the consultation, given the uncharted waters ahead. Indeed, it may well be that this is the sort of scenario that is being alluded to in the phrase “where there are special circumstances pertaining to an individual employee or office holder”, in which case we broadly support the proposal for a “waiver process”.

Question 9: How do you think the government should approach the question of employees who are subject to different capping and recovery provisions under TUPE rules following a transfer to (or from) the private sector and whether there should be consistency with public sector employees in general?

Local authorities are adopting a wide range of delivery models, such as traditional outsourcing, setting up arms-length companies, trusts or working with the voluntary sector. We suggest that the overriding context is that as they are funded from public funds, it would appear equitable for the same rules to apply as they do directly to public sector bodies. However, we recognise that this raises potentially very complex issues, not least of all concerning transfers of pension funds between organisations within both the public and private sector. **Our perception of potential pension “minefields” reinforces our view that further very detailed analysis and consultation is required with respect to any proposed changes to the LGPS.**

Question 10: Do you agree with the proposed approach for waivers to the cap on exit payments?

Within the terms of Council policy, severance payments already need to be reported in the accounts.

We fully agree with the consultation’s recognition that “it may be desirable to grant a waiver...for some individuals from the exit payment cap. Payments in excess of the cap may be needed to support a particular programme of reorganisation where changes need to be made quickly to avoid undermining the continuing effectiveness of operational delivery, or where there are special circumstances pertaining to an

individual employee or office holder.” We also fully support the proposal that as the Council may need to have the ability to pay over the maximum level of the proposed cap there should be full transparency on this and the reporting of it, and that an appropriate “Waiver Policy” should be adopted by the Council. However, we do not support the proposal that such matters should be considered by Full Council. As there might need to be discussions concerning matters that could potentially constitute a breach of employee confidentiality we think that it would be appropriate to delegate this to a more suitable committee. This Council’s existing policy for dealing with changes to the Council’s establishment, (including redundancies and early retirements on the grounds of redundancy) necessitates such matters being considered by the General Purposes Committee. We therefore think that this would be the more suitable forum for addressing waivers to the cap.

As we have identified a potential risk of indirect discrimination in the imposition of a cap, we would wish to have the ability to mitigate against this risk in the Waiver Policy. In the hypothetical circumstance where a post has been deleted from the Council’s establishment, but the termination cost for the employee selected, by due process, for redundancy would be more than £95,000, there could be the unintended consequence of necessitating the retention of an “older” employee, in order to avoid an unlawful dismissal, in some other role until the cost of their termination falls within the cap. Taken across several cases there may therefore be a risk that the Council could indirectly discriminate against younger employees whose termination costs would fall below the cap (and who would not therefore need to be “retained”). In order to avoid the risk of legal challenge the Council would therefore wish to accommodate this type of risk mitigation in its Waiver Policy.

. Question 11: Are there other impacts not covered above which you would highlight in relation to the proposals in this consultation document?

It has occurred to us that a more detailed demographic analysis is required as part of the impact assessment of any proposals to amend the provisions of the LGPS to align with the proposed cap. We sense this may highlight potential adverse differential impacts upon older workers and men and thus pose an unintended risk of legal challenge on the grounds of indirect or even direct discrimination.

Question 12: Are you able to provide information and data in relation to the impacts set out above?

As part of any detailed impact analysis, and given specific parameters i.e. proposed dates of implementation, the Council would be able to supply the appropriate response/demographic information.

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Agenda Item 5

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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Agenda Item 6

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT
INFORMATION**

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By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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Agenda Item 8

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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