

Report to Governance Committee

26 June 2023

Severance Payment arrangements

Report by Director of Law and Assurance

Electoral division: N/A

Summary

This report explains the effect of recent government guidance on payments made by local authorities to staff on the termination of employment, particularly in any case where the proposals include non-contractual payments. The Council's pay policy statement provides that the Council will apply any statutory guidance to decisions about such payments and the report explains how this will happen and what changes to current procedures need to be made, including to the scheme of delegation and to Standing Orders.

Recommendations

The Committee is asked to:

- (1) Note the provisions of the guidance on severance payments and the proposals for giving effect to them,
 - (2) Approve the proposed changes to the Council's scheme of delegation Part 3, Appendix 4 of the Constitution, and
 - (3) Recommend to the County Council the proposed changes to the Governance Committee's Terms of Reference, Part 3, Appendix 7 and to Council Standing Orders, Part 4, Section 1.
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Proposal

1. Background and Context

- 1.1 From time to time the County Council, as any employer, needs to settle terms for the termination of employment of a member of staff. This may cover contractual payments for compensation for loss of employment or, less commonly, non-contractual payments due to exceptional circumstances.
- 1.2 The Committee is responsible for considering and recommending for approval by the County Council the Council's statement in relation to its pay policy.

The current statement was approved by Council in February 2023. It includes the following text in relation to severance payments:

10.1 Severance

Should a severance payment be proposed that exceeds any threshold prescribed by Regulations, the County Council shall act in accordance with the requirements of those Regulations. Until such time any severance payment shall be in accordance with statutory guidance, the Council's pay policy and Scheme of Delegation, including relevant cabinet member approval.'

- 1.3 There are no regulations in place or proposed for a prescribed threshold. The Government has published guidance to local authorities on what the guidance calls 'special severance payments', by which it means those payments made on the termination of employment which are not contractual or otherwise legally binding on the employer.
- 1.4 The guidance is issued under s.99 of the Local Government Act 1999, which deals with the 'best value' obligations of local authorities. In the exceptional circumstances where it is decided that a special severance payment should be paid, the local authority should ensure any special severance payments arrangements are fair, proportionate, lawful and provide value for money.
- 1.5 The guidance provides a list of severance payments which fall outside the scope of the guidance. These include payments for contractual notice, untaken leave, redundancy, ill health retirement or work-based injury and for any costs arising from the payment of contracted pension benefits. They also exclude payments made through settlements in employment tribunal or other legal proceedings and those formally mediated by ACAS.
- 1.6 For exceptional cases where payments are proposed which fall outside the exemptions above the guidance provides for checks to be put in place to ensure that payments are only made after rigorous assessment and with appropriate levels of authorisation. Guidance is also given on how such payments are published in the Council's accounts.
- 1.7 As the Council is committed to making all severance payments in accordance with statutory guidance a number of changes are proposed to practice and procedure, to the Council's scheme of delegation and to Standing Orders.

2. Details of proposals to give effect to the guidance

- 2.1 The Council will prepare a written procedure for use by HR advisers and services in all cases of employment termination so as to distinguish those which meet the criteria for 'special severance' and so will be caught by the statutory guidance. It will provide that the following provisions will apply to special severance payments before they can proceed.
- 2.2 In any case in which any special severance payment is under consideration the officers involved in advising on and considering such payments shall have due regard to the matters recommended for consideration in the guidance or any future version of or amendment to the guidance. This shall include:
 - Whether there is a possibility of exiting the individual at a lower cost

- The duty to manage taxpayers' money appropriately
 - The setting of any potential precedent
 - Evidence for additionality – what is gained by the use of the payments.
- 2.3 The officers shall obtain legal advice on the prospects of successfully defending any potential legal claim. The chance of success and the costs likely to be incurred should be weighed against the costs of the special severance payment. The advice shall include guidance on conflicts of interests and the options for using other mechanisms for dealing with the issues giving rise to the proposals.
- 2.4 It is proposed that the scheme of delegation and Standing Orders be amended to make provision for any proposal for a special severance payment in excess of £100,000 to be referred for approval by the County Council.
- 2.5 The officer scheme of delegation shall be amended to provide for the Chief Executive to have authority to approve special severance payment which exceeds £20,000 only after consultation with the Leader of the Council or such Cabinet Member the Leader so authorises. All proposals for special severance payments shall be referred for advice to the Directors of Law and Assurance and of Finance and Support Services.
- 2.6 Where the Chief Executive is the subject of a severance payment the guidance states that the request for authorisation shall be considered by a panel of members which shall include two independent members (those appointed from time to time to advise the Standards Committee or the Standards Committee of another local authority). It is proposed that Standing Orders be amended to make provision for this and that the panel comprise three members of the Governance Committee and two independent members, to be selected in consultation with the Chairman.
- 2.7 In relation to transparency there are already provisions in the Accounts and Audit Regulations 2015 requiring the publication in the Council's statement of accounts of payments made through severance arrangements. It is proposed that this should include separate reference to any payments of special severance in accordance with the proposals set out above.

3. Consultation, engagement and advice

- 3.1 The Director of HR and Organisational Development has been consulted as has the Director of Finance and Support Services. Both the leader and the Chairman have been consulted as the proposals include the allocation of certain responsibilities to the holders of their respective offices.

4. Finance

- 4.1 There are no financial consequences from the proposals set out in the report. The guidance has been issued to local authorities under the 'best value' provisions of the Local Government Act 1999. The aim of the proposals is to ensure that such payments remain exceptional and subject to due process and transparency.

5. Risk Implications and Mitigations

Risk	Mitigation
Lack of openness and transparency	The arrangements for consulting or referring to members and for the publication in accounts will ensure transparency.
Payments being made outside the provisions of the guidance	The comprehensive set of proposals should provide sufficient checks and balances to ensure due process
Breaches of personal data	The arrangements will be applied by senior officers familiar with data protection rules to ensure no personal information is unlawfully disclosed.

6. Policy alignment and compliance

- 6.1 There are no crime and disorder, human rights or legal implications arising from this report other than those addressed in the report and in the risk implications section. There are no public health or social value implications.
- 6.2 In terms of the Equality Duty, it is important for the Council to ensure all employment practices and procedures are applied fairly and without discrimination. This will be a factor applied when the internal procedures are settled. The procedures will be drafted so as to be fully compliant with anti-discrimination legislation and the public sector equality duty.

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Appendices

Appendix 1 – draft changes to Standing Orders and to Scheme of Delegation

Background Papers: None