

Meeting of the Cabinet – 26th October 2017

Report of the Corporate Scrutiny Committee – Redundancy and Re-engagement

Recommendation from the Corporate Scrutiny Committee held on 26th September 2017

Purpose

1. To consider a recommendation of the Corporate Scrutiny Committee meeting held on 26th September, 2017 regarding the re-engagement of employees who have left the employment of the Authority for reasons of redundancy.

To seek Cabinet approval to amend the Council's existing Managing Employees at Risk of Redundancy Policy following the recommendation of the Corporate Scrutiny Committee meeting held on 26th September 2017.

Recommendations

2. That Cabinet:
 - Consider the options detailed below.
 - Consider the recommendation from Corporate Scrutiny Committee that Option 1 be approved as the preferred option to be adopted by the Council with the exception that casual workers be exempt.
 - That the Council's Managing Employees at Risk of Redundancy Policy be amended to reflect the decision of Cabinet.

Background

3. At the meeting of the Corporate Scrutiny Committee held on 17th November 2016 and as part of the Medium Term Financial Strategy report, Committee requested clarification on the Council's position regarding its policy on the re-engagement of employees who had left the Authority as a result of being made redundant.
4. A verbal update was given to the Committee by the HR Strategic Business Partner at its meeting on 7th March 2017 to clarify the Council's current position whereby it was agreed that the Council undertake a review of its Redundancy Policy having regard to the approach being adopted by neighbouring authorities. A further report was presented to the Corporate Scrutiny Committee held on 26th September 2017.

Current Position

5. The Council's current Managing Employees at Risk of Redundancy Policy is silent on the re-engagement of employees who have left the Council's employ for reasons of redundancy, whether that be on a voluntary or compulsory basis. However, the Council does have the discretion to stipulate a length of time that must elapse before an employee can be re-engaged following redundancy but this would need to be clearly defined within its Policy.
6. For the period April 2014 to March 2016, out of a total of 362 employees leaving on a redundancy basis, 29 were re-engaged at a later date. Of those 29 employees, 20 left on a voluntary redundancy basis and 9 as a result of compulsory redundancy. 17 of those 29 returned on a permanent basis with the remaining 12 being brought back in a casual capacity. Of the 17 who returned on a permanent basis, 10 had left the Authority in excess of 12 months of having been made redundant. Appendix 2 to this report outlines the timescales in which those 29 employees were re-engaged and provides an analysis of the redundancy compensation and re-engagement costs.
7. It should be recognised however that, in the first instance, the Council makes every effort to find alternative employment for any employee who finds themselves at risk of redundancy through its Retraining and Redeployment Policy.
8. It is the responsibility of the Council to ensure that exit payment arrangements, such as redundancy, are fair and represent value for money for the tax payer. In this respect, where employees are re-engaged by the Council shortly after having received a redundancy payment, this could be considered to represent poor value for money.
9. The Government are currently seeking to legislate on the recovery of public sector exit payments where an employee re-joins the public sector. The key element of the Government's proposals will require a high earning public sector employee who earns in excess of £100k per annum to repay their exit payment should they return to the public sector within a 12 month period. Recovery of any such payment from an employee earning below this threshold will remain a matter for the individual employer. A decision on the implementation date of this proposed new legislation is still awaited from Government.
10. Redundancy payments and continuity of service within Local Government are governed by the Redundancy Modification Order (RMO). A summary of the RMO is attached as Appendix 1 to this report.

Benchmarking of Other Authorities

11. A benchmarking exercise has been undertaken of other authorities to identify what approach is being adopted elsewhere with particular emphasis being placed on neighbouring authorities. Details are outlined in Appendix 3 to this report. Whilst there appears to be no consistent approach to the time that authorities stipulate regarding re-engagement of anyone having left on a redundancy package, it is apparent that the majority do invoke a 12 month period before the re-engagement of anyone who has left on a voluntary redundancy basis.

Options for Consideration

12. At its meeting on Tuesday 26th September 2017, Corporate Scrutiny Committee were asked to consider the following options regarding the introducing of a re-engagement protocol into the Council's Managing Employees At Risk of Redundancy Policy that would be applied to any employee leaving the Council as a result of redundancy. The proposal was that this would be applied to any form of re-engagement including consultancy, casual, agency, external provider.

Option 1

13. There is no re-engagement, in any capacity, of any employee who has left the employment of the Council on a redundancy package of any kind, within a 12 month period of their leaving date.
14. The implementation of a 12 month ruling would align to that being proposed by Government in terms of the recovery of any exit payment to anyone earning in excess of £100k who returns to the public sector within a 12 month period.

Option 2

15. Preclude the re-engagement of any employees who have left the Council following a compensatory redundancy payment on a sliding scale basis. This would be based on value for money taking into account the redundancy package they had received when being made redundant versus the cost of re-engaging. This approach would provide consideration to lower earners, part time workers and those with less service who may have had breaks for family commitments, allowing them to return to work sooner.

REDUNDANCY PAYMENT	TIMESCALE
Less than £5k	3 months
£5k - £10k	6 months
£10k - £15k	9 months
£16k plus	12 months

16. A slight alternative to Option 2 would be to differentiate between voluntary and compulsory redundancy and only apply this to anyone who had left the employment of the Council on a compulsory redundancy basis.
17. It should be recognised, however, that Option 2 is far more complex to administer and, therefore, would be more time consuming and costly to resource. There is also the risk of communication and misinterpretation owing to its complexity which could result in an inconsistency of approach.
18. Cabinet are advised that with any of the options outlined above, consideration is given to the Chief Executive and Strategic Directors of the Council to disapply this protocol in very exceptional cases. Corporate Scrutiny at its meeting on 26th September 2017 agreed that exceptions be explored but with agreed criteria to ensure a consistent and fair approach.
19. It is also advised that the Strategic HR Business Partners provide updates on Directorate activity to Leadership Team meetings on a quarterly basis.
20. At its meeting on 26th September 2017, Corporate Scrutiny Committee considered the options put forward and, after some debate, proposed that Option 1 be put forward to Cabinet for approval with the exception that casuals be exempt. It

was agreed that to apply this protocol to casuals would have a detrimental impact on areas such as Elections who rely on casual workers to provide support on an as and when required basis.

Finance

21. There are no cost implications to this proposal

Law

22. The Repayment of Public Sector Exit Payments and the Public Sector Exit Payment Regulations 2016 have been published in draft form and are not in force as yet. However, the draft Regulations only apply to higher earners £80,000 - £100,000+ and do not prohibit former employees being rehired- they would simply have to repay all/some of their exit package. However the government's consultation package recognised that some public organisations may want to go further than the repayment provisions in the draft, for example prohibiting employees from returning to work for the organisation before 12 months have elapsed from the date of termination of employment due to redundancy.

23. With any option, there must be an adequate break in service before re-engaging employees who have left the Council as a result of redundancy to avoid any issue with continuity of service.

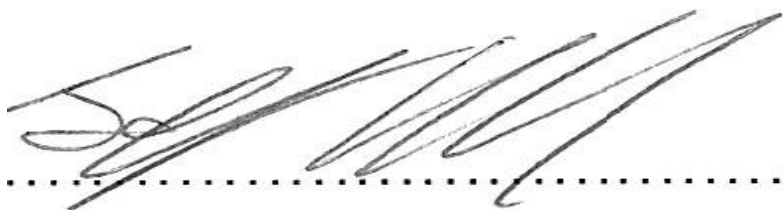
Equality Impact

24. An equality impact assessment has been commenced and a draft is attached as Appendix 4 to this report.

Human Resources/Transformation

25. The Managing Employees at Risk of Redundancy Policy is monitored by HR Services, including equality monitoring.

26. The administration associated with the introduction of a protocol precluding employees being re-engaged would form part of any pre-employment checks.



Councillor Jeff Hill

Chair of Corporate Scrutiny Committee

Contact Officer: Adrian McCormick
Chief Officer Corporate Transformation and Performance
Telephone: 01384 813449
Email: adrian.mckormick@dudley.gov.uk

List of Background Papers

Excerpt from the Redundancy Modification Order (Appendix 1)
Redundancy and Re-engagement Analysis (Appendix 2)
Benchmarking outcomes of other Authorities (Appendix 3)
Draft Equality Impact Assessment (Appendix 4)