

# ITEM 04

Time began: 10.30am

Time ended: 11.04am

## **Personnel Committee 25 February 2021**

Present                      Councillors Hezelgrave (Chair)  
                                    Councillors A Holmes, Testro, McCristal, P Pegg, Sandhu

Officers present        Liz Moore – Head of Human Resources  
                                    Helen Bounds – Human Resources Advisor Lead  
                                    Nicola Gerrard – Human Resources Advisor  
                                    Paul McMahon – Principal Lawyer

### **14/20        Apologies**

There were no apologies.

### **15/20        Late Items to be Introduced by the Chair**

There were no late items.

### **16/20        Declarations of Interest**

There were no declarations of interest

### **17/20        Minutes of the Meeting held on 07 January 2021**

The minutes of the meeting held on 07 January 2021 were agreed as an accurate record.

### **18/20        Redundancy Payments – Response to the                                     motion approved at Council on 25 November                                     2020**

The Committee received a report from the Strategic Director of Corporate Resources. This report was presented by the Head of Human Resources and provided a response to the motion on redundancy payments which had been approved at Council on 25 November 2020.

The Committee noted that at the Council meeting on 25 November 2020, a motion on Redundancy Payments was approved to be referred to Personnel

Committee for further consideration. It was reported that this report addressed the motion to consider equalising across the age bands the number of weeks' service used in the redundancy payments calculation. The Committee noted that the Council's policy for redundancy payments was based on the statutory calculation for redundancy pay.

It was noted that the Council used a lawful statutory redundancy scheme for the basis of its redundancy pay and that this was enhanced by using actual weekly pay, rather than the statutory week's pay which was capped. It was reported that this scheme was free of risk due to the lawful exemption included in the Equality Act 2010 and had not been subject to challenge.

The Committee noted that equalisation of the number of weeks paid would remove the lawful exemption and leave the Council vulnerable to discrimination claims from older employees that would have to be objectively justified. It was also noted that additional costs would be incurred by equalising the number of weeks service for redundancy pay at a time of significant financial challenge due to the COVID 19 pandemic. It was noted that since the report had been produced, the government had revoked The Restriction of Public Sector Exit Payment Regulations 2020 and therefore the reference in the report to the potential impact of the regulations no longer applied.

The Committee noted that the statutory calculation for redundancy used three age bands to determine how many weeks of pay an individual received for each year of completed service.

It was noted that the three age bands were:

- Under age 22 – 0.5 week's pay per completed year of service
- Age 22 - 40 – 1 week's pay per completed year of service
- Age 41 and above – 1.5 week's pay per completed year of service

It was noted that length of service was capped at 20 years.

It was reported that the statutory amount of a week's pay after 6th April 2020 was capped at £538 per week. The Committee noted that Derby City Council did enhance this, and calculated redundancy pay using the employee's actual weekly pay and therefore, an individual could receive above this figure.

The Committee noted that the Equality Act 2010 contained an exemption from the age discrimination rules for both the statutory redundancy pay scheme and any enhanced schemes that follow the same pattern. It was reported that this was a public policy decision based on an acceptance that older individuals faced more of a challenge in gaining employment, and therefore there was potentially a need for their redundancy payment to sustain them for longer than a younger individual who was more likely to obtain work sooner.

The Committee noted that younger individuals could also claim discrimination in that they weren't able to accrue the length of service that older individuals

may have. It was reported that this was also covered by the same exemption in the Equality Act 2010.

It was noted that in order to maintain the Council's ability to rely on this exemption, any changes to enhance the redundancy scheme must use the same age bands as the statutory scheme and mirror the associated weekly multiplier. The Committee noted that as an example, an increase to one week per year of completed service for under 22's would result in an increase to one and half weeks for age 22 – 40 and two weeks for 41 and over. It was noted that equalising without mirroring would remove the ability to rely on the exemption and leave the Council vulnerable to the risk of a discrimination claim.

The Chair asked Committee members whether they would like to consider raising the enhanced payment. The Committee's legal adviser informed the Committee that simply raising the payment by half a week for each of the three bands may breach the exemption. He explained that if the payment for band one increased by half a week to one full week this would represent a 100% increase, and explained that – in order to mirror the permitted disparity and maintain the protection of the statutory exemption – it might be necessary to apply a similar, 100% increase to for the other two bands to match this. It was reported that this would equate to two full weeks for band two and three full weeks for band three.

Councillors commented that although they understood the rationale behind wanting to increase redundancy payments, they felt that the current redundancy payment scheme was sufficient. Councillors felt that the current scheme already provided an enhanced payment and that the Council's current financial position would make further increases to this scheme difficult.

It was suggested that an increase in redundancy payments could have the negative effect of reducing resources for other employees and could therefore lead to further redundancies.

The Committee noted that the Council have never been challenged on their lawful redundancy payment criteria.

It was reported that if the Council were to move away from using the statutory scheme or an enhanced version of it, the Council would no longer be able to rely on the lawful exemption and could then be open to age discrimination claims as it wouldn't be affording older individuals the increased redundancy pay the statutory scheme allows. It was noted that the Council would then have to be able to objectively justify any potential discrimination which was likely to prove difficult.

The Committee noted that the number of potential redundancies the Council might need to consider could vary significantly from year to year, depending on several factors such as the Medium Term Financial Plan position, and also any proposed service reconfigurations. It was noted that this made it very difficult to predict what future additional costs would be encountered if a decision was

taken to pay 1.5 week's pay for each completed year of service irrespective of age. The Committee noted an example of what the financial impact would have been over the financial years 2017/18 to 2019/20 if such a change to the redundancy pay calculation had been in place at the time.

It was noted that if the decision was made to move away from using the statutory redundancy pay scheme and instead pay 1.5 week's pay per completed year of service to everyone irrespective of age, based on a mean average of the total redundancy payments made in the previous three financial years, this would represent an additional cost of £201,344.

It was reported that if any enhanced Voluntary Redundancy (VR) schemes were required in the future, this could prove more costly if the Council already had increased redundancy costs due to equalising the number of weeks paid. The Committee noted that this could impact on the Council being able to rely on this approach and reduce the attraction of any future VR scheme if it did not offer much more by way of redundancy pay.

**The Committee resolved to continue to use the statutory redundancy calculation age bands and weeks per year multiplier when calculating an individual's redundancy pay, and retain the enhancement of using actual weekly pay, uncapped for the calculation.**

MINUTES END.