

Report sponsor: Simon Riley, Strategic Director
of Corporate Resources
Report author: Nicola Gerrard, HR Advisor

Redundancy Payments – Response to the motion approved at Council on 25 November 2020

Purpose

- 1.1 At the Council meeting on 25 November 2020, a motion on Redundancy Payments was approved to be referred to Personnel Committee for further consideration. This report addresses the motion to consider equalising across the age bands the number of weeks' service used in the redundancy payments calculation.
- 1.2 The Council's current policy for redundancy payments is based on the statutory calculation for redundancy pay. This report will explain both the reasoning behind the statutory calculations, and the legal exemption afforded to the statutory calculation, and make a recommendation for the Personnel Committee to consider.

Recommendation

- 2.1 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.

Reason(s)

- 3.1 The Council uses a lawful statutory redundancy scheme for the basis of its redundancy pay. This is enhanced by using actual weekly pay, rather than the statutory week's pay which is capped, as detailed in paragraph 4.1 below.
- 3.2 This scheme is free of risk due to the lawful exemption included in the Equality Act 2010 and has not been subject to challenge.
- 3.3 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.
- 3.4 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. A change of employment legislation relating to The Restriction of Public Sector Exit Payment Regulations 2020 also provides uncertainty as to how redundancy payments will be made in the future.

Supporting information

4.1 Statutory calculation

The statutory calculation for redundancy uses three age bands to determine how many weeks of pay an individual receives for each year of completed service, these are; -

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

Length of service is capped at 20 years.

The statutory amount of a week's pay after 6th April 2020 is currently capped at £538 per week. However, Derby City Council does enhance this and calculates redundancy pay using the employee's actual weekly pay and therefore, an individual could receive above this figure.

4.2 Lawful exemption within the Equality Act 2010

The Equality Act 2010 contains an exemption from the age discrimination rules for both the statutory redundancy pay scheme and any enhanced schemes that follow the same pattern.

This is a public policy decision based on it being accepted that older individuals face more of a challenge in gaining employment, and therefore there is potentially a need for their redundancy payment to sustain them for longer than a younger individual who is more likely to obtain work sooner.

Younger individuals could also claim discrimination in that they aren't able to accrue the length of service that older individuals may have. However, this is also covered by the same exemption in the Equality Act 2010.

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. For 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. Equalising without mirroring would remove the ability to rely on the exemption and leave the Council vulnerable to the risk of a discrimination claim.

4.3 Challenge

The Council have never been challenged on their lawful redundancy payment criteria.

If we were to move away from using the statutory scheme or an enhanced version of it, we would no longer be able to rely on the lawful exemption and could then be open to age discrimination claims as we wouldn't be affording older individuals the increased redundancy pay the statutory scheme allows. We would then have to be able to objectively justify any potential discrimination. This is likely to prove difficult based on the points above.

4.4 Increased costs

The number of potential redundancies the Council might need to consider can vary significantly from year to year, depending on several factors such as the Medium Term Financial Plan position, and also any proposed service reconfigurations. This makes it very difficult to predict what future additional costs would be encountered if the decision is to pay 1.5 week's pay for each completed year of service irrespective of age. However, the example below illustrates 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.

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.

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

On 4th November 2020 The Restriction of Public Sector Exit Payment Regulations 2020 came into effect. These regulations restrict any exit payment exceeding £95,000. The Ministry of Housing, Communities and Local Government have proposals that are currently being considered by the government, in relation to the above regulations, that may change the way redundancy payments are made in the future and this provides a level of uncertainty as to whether this could incur additional costs.

4.5 Precedent setting

A benchmarking exercise has been carried out, on a national basis, to ascertain what formula other councils use to calculate redundancy pay. Of the 16 councils that responded, 15 either use the statutory redundancy pay scheme or an enhanced version of it. Enhancements used by other councils are generally the use of actual weekly pay rather than the statutory weekly cap, as Derby City Council does, or the total redundancy figure that has been calculated using the statutory scheme, increased by 50 to 100 percent.

One council within the benchmarking exercise pays 1.5 week's pay per completed year of service for everyone.

Based on the information above, moving away from using the statutory scheme would put Derby City Council as an outlier nationally. Moving away from using a statutory policy now that is legally compliant and is free of risk due to the exemption set out in the Equality Act 2010 may set a precedent for the future in terms of other requests to vary employment rights away from a legally compliant framework to seek better terms for certain employee groups.

Public/stakeholder engagement

5.1 Public engagement has not been required for this report.

Other options

6.1 The purpose of this report was to explore the potential option of equalising of the redundancy calculation. However, enhancing the scheme was also explored but would lead to increased costs due to any enhanced scheme needing to mirror the differential between the age bands as detailed in paragraph 4.2, to enable it to comply with the exemption in the Equality Act 2010.

Financial and value for money issues

7.1 The associated potential increased costs associated with equalising have been considered and are detailed in paragraph 4.4 of the report.

Legal implications

8.1 Paragraph 4.1 of this report details the lawful exemption included within the Equality Act 2010. The Equality Act 2010 and the associated lawful exemption within it relating to the Statutory Redundancy Scheme has been considered and referenced throughout this report.

Climate implications

9.1 None directly arising from this report.

Other significant implications

- 10.1 The use of the Statutory Redundancy Scheme is risk free due to the exemption within the Equality Act 2010. The council would become vulnerable to risk moving away from this scheme or an enhanced version of it.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Charlotte Hutton, Principal Lawyer	04/02/21
Finance	Toni Nash, Head of Finance	01/02/21
Service Director(s)		
Report sponsor	Simon Riley, Strategic Director of Corporate Resouces	07/02/21
Other(s)	Liz Moore, Head of HR	07/02/21

Background papers:	None
List of appendices:	None