

TRAFFORD COUNCIL

Report to: Employment Committee
Date: 4th September 2023
Report for: Information and decision
Report of: Director of Human Resources

Report Title

Special Severance Payments

Summary

This report outlines the requirements of local authorities following new statutory guidance on the use of 'special severance payments' and details arrangements that have been put in place within Trafford Council to ensure that we are compliant with the guidance.

Recommendations

It is recommended that Employment Committee:

- Note the new statutory criteria and approval for special severance payments and reporting requirements.
- Note the approvals for the guidance and process.
- Note that as part of the approval requirements if there are proposed payments of £100k plus these will go to Employment Committee first prior to Council for approval.

Contact person for access to background papers and further information:

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Background Papers: *None*

Implications:

Relationship to Corporate Priorities	One of Trafford Council's key priorities is to support people out of poverty (by maximising people's income). The Council spending less on employee exit packages will redistribute funds more equitably.
Relationship to GM Policy or Strategy Framework	No direct impact. All other local authorities must comply.
Financial	Following our local guidance and approval

	process should lead to reduced spend in this area than there otherwise would be without the statutory guidance. The amount can't be quantified.
Legal Implications	The guidance is statutory and so the Council must ensure compliance – following our local guidance and approval process to reduce the risk of any future legal challenge.
Equality/Diversity Implications	Decisions on payments should be consistent with our Public Sector Equality Duty under the Equality Act 2010.
Sustainability Implications	No direct impact.
Carbon Reduction	No direct impact.
Staffing/E-Government/Asset Management Implications	Any payments in scope for those leaving the Council will be fair, proportionate, value for money and go through appropriate scrutiny and a sign-off process. The aim is that there will be fewer payments and payments of lower value overall.
Risk Management Implications	No direct impact.
Health and Safety Implications	No direct impact.

1.0 Background

- 1.1 Most public sector workers enjoy statutory and contractual redundancy or severance terms that are significantly better than the minimum statutory redundancy entitlement, often higher than the value of redundancy or severance payments made in the private sector.
- 1.2 In Trafford, our current policy position for redundancy payments is based on an actual week's pay and it uses the statutory matrix which is based on years of continuous service, up to a maximum of 20, and age. The maximum number of weeks' pay an individual can receive is capped at 30 weeks. Redundancy payments are calculated as follows: -
- For each completed year of service up to the age of 21 inclusive; half a week's pay.
 - For each completed year of service from age 22-40 inclusive: one week's pay.
 - For each completed year of service from age 41 and upward one and a half week's pay.

In addition to redundancy payment, where employment terminates on the ground of redundancy, the Council must pay an immediate pension to an employee who is a member of the Local Government Pension Scheme who is aged 55 or over and meets the 2 years vesting period in the scheme.

- 1.3 In May 2022, the government introduced statutory guidance for paying and disclosure of additional, discretionary sums on top of these entitlements ("special severance payments"). This was in recognition of them not being good value for money or offer fairness to the taxpayers who fund them and so, should only be considered in exceptional cases.

- 1.4 This guidance is issued under section 26 of the Local Government Act 1999, the purpose of which is to:
- set out the government's view that Special Severance Payments do not usually represent value for money and should only be considered in exceptional circumstances.
 - set out the criteria employers should consider in the exceptional circumstances in which it may be appropriate to make a Special Severance Payment.
 - give examples of the exceptional circumstances in which Special Severance Payments may be appropriate.
 - clarify the disclosure and reporting requirements for Special Severance Payments.

2.0 Implications for the Council

- 2.1 If we are considering an enhanced exit package, we will need to ensure that we have acted in line with the guidance. It details which payments are in scope, which are not in scope, and which have a level of discretion/judgement. It also details the criteria any proposed payment should be 'tested' against and the approval process which is dependent on the value of the payment being considered. However, decision making will still need to adhere to the Council's current Constitution.
- 2.2 We will have to report any 'special severance payments' in line with the guidance, details of which are contained within the document. There are existing mechanisms for the annual reporting of exit payments – they are reported in the annual Pay Policy Statement and Statement of Accounts.

3.0 Guidance and supporting documents

- 3.1 Guidance, approvals process and a business case template have been drafted to support and provide the required governance to ensure we comply with the statutory guidance where these scenarios arise.

4.0 Recommendations

- 4.1 It is recommended that Employment Committee:
- Note the new statutory criteria and approval for special severance payments and reporting requirements.
 - Note the approvals for the guidance, process and supporting business case template.
 - Note that as part of the approval requirements any proposed payments of £100k plus will go to Employment Committee and then Council for sign-off.

Appendix 1 - Special Severance Payments – Guidance

1.0 Introduction

- 1.1 The government issued statutory guidance in May 2022, under section 26 of the Local Government Act 1999, which sets out their position on the use of Special Severance Payments made by local authorities ('Statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England').
- 1.2 The guidance makes it clear that we have a responsibility to ensure that Special Severance Payments are only made when there is a clear, evidenced justification for doing so. We must ensure that all relevant internal policies and procedures have been followed in agreeing such payments and all alternative actions have been fully explored and documented. Where payments are made they need to be fair, proportionate, lawful and provide value for money for the taxpayer.

2.0 What is a special severance payment?

- 2.1 Special Severance Payments are payments made to employees, officeholders, workers, contractors, and others outside of statutory, contractual, or other requirements when leaving employment in public service. The Council may sometimes consider making such a payment in situations where the individual concerned resigns, is dismissed, or agrees a termination of contract. Which types of payments are Special Severance Payments will vary according to an employee's particular circumstances, and therefore the examples below are illustrative only.
- 2.2 The following types of payments are likely to constitute Special Severance Payments:
 - a) any payments reached under a settlement agreement between the employer and employee to discontinue legal proceedings without admission of fault
 - b) the value of any employee benefits or allowances which are allowed to continue beyond the employee's agreed exit date
 - c) write-offs of any outstanding loans
 - d) any honorarium payments
 - e) any hardship payments
 - f) any payments to employees for retraining related to their termination of employment

2.3 The following types of payments may constitute Special Severance Payments, depending on the terms of the individual's contract, relevant statutory provisions, any non-statutory applicable schemes and other relevant terms and conditions:

a) pay or compensation in lieu of notice where the amount of the payment is not greater than the salary due in the period of notice set out in the employee's contract

b) pension strain payments arising from employer discretions to enhance standard pension benefits (for example under Regulation 30(5) where the employer has waived the reduction under Regulation 30(8) or because of the award of additional pension under Regulation 31)

In relation to our internal process caution should be taken and if there is any doubt it should be assumed that the above are included.

2.4 The following do not constitute Special Severance Payments:

a) statutory redundancy payments

b) contractual redundancy payments, whether applicable to voluntary or compulsory redundancy, and whether agreed by collective agreement or otherwise

c) severance payments made in accordance with that local authority's policy adopted pursuant to Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

d) a strain cost paid to the relevant LGPS administering authority under LGPS Regulation 68(2) which results from a LGPS member's retirement benefits becoming immediately payable without reduction under Regulation 30(7), or under Regulation 30(6) where the employer has waived the reduction under Regulation 30(8)

e) payment for untaken annual leave

f) payments ordered by a court or tribunal or agreed as part of a judicial or non-judicial mediation

g) payments made as part of the ACAS Early Conciliation process

h) payments made to compensate for injury or death of the worker

i) payments made in consequence of the award of ill-health retirement benefits under Regulation 35 of the LGPS Regulations

3.0 Consideration of making Special Severance Payments

- 3.1 The best value duty, as set out in section 3 of the Local Government Act 1999, amongst other things requires authorities to secure value for money in spending decisions. The Council must genuinely consider payments to be in the public interest. In taking decisions elected members must make all proper enquiries and consider all available material that can help in coming to a decision. Decisions on payments should also be consistent with our Public Sector Equality Duty under the Equality Act 2010.
- 3.2 All requests to make a special severance payment must be supported by a robust business case (see Appendix 1). There are two main areas for consideration: Economy and Efficiency and effectiveness.

3.2.1 Economy

The Council will need to consider the economic rationale behind the proposed Special Severance Payment, including:

- Whether there is any feasible possibility of exiting the individual at a lower cost. Only where there is no such possibility should a Special Severance Payment be considered
- How the exit payment will be perceived by the public and whether it is in line with the duty to manage taxpayers' money appropriately
- What alternative use could be made of that expenditure. All Special Severance Payments necessarily reduce the funds that would otherwise be available to deliver important public services
- The setting of any potential precedent (e.g. where a Special Severance Payment is made to certain employees and not others)
- Evidence for additionality i.e. that those offered Special Severance Payments would not have been willing, under any circumstances, to leave with their statutory and contractual benefits alone.

3.2.2 Efficiency and effectiveness

- Details of legal advice gained on the prospects of successfully defending an Employment Tribunal claim (or claim to any other court or tribunal with jurisdiction), if an employee were to take a legal route to appeal any grounds of their employment being terminated. The chance of success and the costs likely to be incurred should be noted and weighed up against the costs of making a Special Severance Payment
- Evidence to support the fact that that these payments are not used to avoid management action, disciplinary processes, unwelcome publicity, or avoidance of embarrassment
- Any consideration of private sector practice, where payments are typically less generous. This is important given the added duty in the public sector to prudently manage taxpayers' money
- The way any conflicts of interest have been managed to ensure that individuals who are the subject of complaints play absolutely no role in

deciding whether those complaints should be settled by making an award to the complainant from public funds

3.3 There may be exceptional circumstances where the existing statutory or contractual entitlements, or both, are insufficient to facilitate an exit or to offer sufficient compensation for loss of employment or office, for example:

- In order to set aside what would otherwise be a reduction in entitlement caused by a break in continuity of service (e.g. where a member of staff has taken a break in service to accompany their spouse on military service overseas).
- To help recruitment and retention, it has resolved to recognise for severance payment calculation purposes past service with another non-Modification Order employer (such as service with the NHS prior to the transfer of public health functions to local government).
- To settle disputes, where it can be properly demonstrated that other routes have been thoroughly explored and excluded. After receiving appropriate professional advice, it may then possibly be concluded that a special severance payment is the most suitable option and prudent use of public money.

3.4 Those approving a Special Severance Payment related to a settlement agreement should be provided with appropriate evidence that attempts were made to resolve disputes before they escalated to a legal claim. They should also bear in mind that even if the cost of defeating an apparently frivolous or vexatious claim will exceed the likely cost of that settlement to the employer, it may still be desirable to take the case to formal proceedings. This is because successfully defending such cases will discourage future frivolous or vexatious claims and demonstrate that the local authority does not reward such claims.

4.0 Accountability

4.1 Any Special Severance payments should be approved by specified officers in line with the statutory guidance and our scheme of delegation. The level of approval required depends on the size of the proposed payment.

- payments up to £20,000 must be approved by the Corporate Director of Strategy and Resources in line with the scheme of delegation
- payments of between £20,000 and £100,000, must also be approved and signed off by the Head of Paid Service (Chief Executive) and the Leader of the Council.
- payments of £100,000 and above, must also be approved by Employment Committee and then approved by full Council, as set out in the Localism Act 2011.

- 4.2 Where the proposed payment is to the Head of Paid Service, to avoid a conflict of interest it is expected that the payment should be approved by a panel including at least two independent persons. The statutory guidance should be referred to if this scenario were to arise.
- 4.3 As part of their duties, an authority's s151 Officer, and where appropriate, the Monitoring Officer, should take a close interest in and be able to justify any special severance payments that are made by that authority and in particular any payments made that are not consistent with the content of this guidance.

5.0 Approval process

1. Where a service is considering making a payment they must liaise with their Directorate HR Business Partner.
2. Together they consider whether the proposed payments meet the criteria to be deemed to be a 'Special Severance Payment' in line with the guidance.
3. If the payment does meet the criteria, then the manager must produce a Business Case (using the template provided) with support from colleagues in HR and Finance.
4. The Business Case is then forwarded to the Director of Finance, Director of HR and Director of Legal and Governance for assurance prior to approvals as outlined in the table below.

Payment	Approval
Up to £20,000	Corporate Director Strategy and Resources
Between £20,000 and £100,000	Corporate Director Strategy and Resources, Chief Executive and Leader.
£100,000 plus	Corporate Director Strategy and Resources, Chief Executive, Leader, Employment Committee, and full Council.

6.0 Disclosure

- 6.1 Clear and transparent reporting on exit payments is essential to make available better data on the number and level of exit payments made in local government. This enables local accountability as well as effective management of public money and public confidence. We are required to report on exit payments in several ways as follows:

- 6.1.1 Section 38 of the Localism Act 2011 requires the Council to produce and publish a pay policy statement, which must include our policies on termination payments.
- 6.1.2 Under Regulation 60 of the Local Government Pension Scheme Regulations 2013 we must prepare a statement of our policy in relation to the exercise of the discretion to enhance pension benefits under Regulations 16(2)(e) and 16(4)(d) (funding of additional pension), Regulation 30(6) (flexible retirement), Regulation 30(8) (waiving of actuarial reduction); and Regulation 31 (award of additional pension). We have a published Pension Discretions Policy.
- 6.1.3 Under Regulation 10 of the Accounts and Audit Regulations 2015 we are required to publish an annual statement of accounts, governance statement and narrative statement. As well as following existing guidance on reporting exit payments, we should also disclose in our annual accounts all severance payments, pension fund strain costs and other special severance payments made in consequence of termination of employment or loss of office (but excluding payments on death or ill-health retirement).