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MANCHESTER
CITY COUNCIL

Personnel Committee

Date: Wednesday, 11 November 2020
Time: 2.10 pm, or at the rise of the Executive
Venue: https://manchester.public-i.tv/core/portal/webcast_interactive/522338

This is a **revised and supplementary agenda** with an additional item of business added to the meeting and further information on the original business.

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Membership of the Personnel Committee

Councillors - Ollerhead (Chair), Akbar, Bridges, Craig, Leech, Leese, N Murphy, Rahman, Richards, Sheikh and Stogia

Agenda

Information about the Committee

The Personnel Committee is made up of the Leader of the Council, the other eight Members of the Executive, the Assistant Executive Member (Finance and Human Resources), and the Leader of the Opposition.

Amongst its responsibilities, the Personnel Committee considers department staffing and organisational reviews; determines collective and corporate terms and conditions of staff and ‘market rate’ supplements. The Committee also determines the assignment and re-grading of certain posts and policies relating to local government pensions.

The Council is concerned to ensure that its meetings are as open as possible and confidential business is kept to the strict minimum. When confidential items are involved these are considered at the end of the meeting at which point members of the public are asked to leave.

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At this time admission of the public is not allowed to Council buildings.

Joanne Roney OBE
Chief Executive,
3rd Floor, Town Hall Extension,
Lloyd Street,
Manchester, M60 2LA

Further Information

For help, advice and information about this meeting please contact the Committee Officer:

Donna Barnes
Tel: 0161 234 3037
Email: donna.barnes@manchester.gov.uk

This agenda was issued on **Thursday 5 November 2020** by the Governance and Scrutiny Support Unit, Manchester City Council, Level 3, Town Hall Extension (Lloyd Street Elevation), Manchester M60 2LA.

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Personnel Committee

Minutes of the meeting held on Wednesday, 28 October 2020

Present: Councillor Bridges – in the Chair

Councillors: Akbar, Bridges, Craig, Leech, Murphy and Stogia

Also present:

Apologies: Councillor Leese, Ollerhead, Rahman, Richards, and Sheikh

PE/20/15 Appointment of a Chair for the meeting

In the absence of the Chair Councillor Bridges was appointed to chair the meeting.

Decision

To appoint Councillor Bridges as Chair for the meeting.

PE/20/16 Minutes of the previous meeting

Decision

To approve the minutes of the meetings held on 11 March 2020 and 25 March 2020 as correct records.

PE/20/17 Creation of New Post – Strategic Lead for Early Years

The Committee considered a report of the Chief Executive which presented proposals to establish a post of Strategic Lead for Early Years. The report stated that the post would take on the responsibility of leading the Council’s ongoing development, transformation and delivery of the Early Years strategy and associated priorities.

The key responsibilities of the post were outlined in the report. The Director and Deputy Director – HROD both responded to a question from a member about how the post had been developed, noting that it had previously been assumed from a since disestablished role with a higher salary. It was explained that the since disestablished role had had a greater remit, part of which had included responsibility for education quality assurance. The Committee was assured that the role had been through the Council’s Job Evaluation scheme and had subsequently been determined to be at a salary that was commensurate with SS1.

No Trade Union comments were submitted for consideration. The Committee agreed the recommendation to approve the creation of the post.

Decision

To approve the creation of a new post of Strategic Lead for Early Years Grade at salary scale SS1 (£62,531 - £67,676).

PE/20/18 Creation of New Post – Manchester Climate Change Agency Director

The Committee considered a report of the Deputy Chief Executive and City Treasurer which sought approval for the creation of a Director role for Manchester Climate Change Agency.

The role, to be hosted and funded by the Council, would oversee the delivery of the Manchester Climate Change Framework as well as wider actions to support Manchester in becoming a zero carbon city by 2038.

The key responsibilities of the post were outlined in the report. There was a discussion about the attributes and skill-sets that are required in the role. The Head of Programme Management Office (Commercial Governance & Directorate Support) talked about the importance of balancing the relevant knowledge and understanding of climate change agenda with ability to galvanise partners and other agencies in order to drive forward partnership action.

No Trade Union Comments were submitted for consideration. The Committee agreed the recommendation to approve the post.

Decision

To approve the creation of the post of Manchester Climate Change Agency Director at salary scale SS1 (£62,531 - £67,676).

Manchester City Council
Report for Resolution

Report to: Personnel Committee - 11 November 2020

Subject: Efficiency Early Release Scheme (comprising Efficiency Severance and Early Retirement)

Report of: Deputy Chief Executive and City Treasurer
Director of Human Resources and Organisation Development

Summary

The impact of the Coronavirus pandemic has, and will continue to have a significant financial impact on the organisation. As reported to Executive, the Council is currently reporting a budget gap of £105m for 2021/22, rising to nearly £160m in the following year. As a result c£50m of officer budget options have been proposed with an associated reduction of c200 fte posts. These options are currently being consulted on alongside a voluntary early retirement (VER)/voluntary severance (VS) scheme to enable decisions on the cuts that will be required to be made in time for the 2021/22 financial year. The options and outcomes of the first VER/VS scheme will be reported back to Scrutiny and Executive in January.

This report sets out proposals for the application of an Efficiency Early Release Scheme (comprising Efficiency Severance and Early Retirement) to achieve the reductions in workforce numbers and cost.

Recommendations

Personnel Committee is recommended:

1. To confirm the Council's policy on Voluntary Early Release, as set out in the Severance and Early Retirement (Efficiency) Policy Statement be amended by increasing the maximum discretionary lump sum payment from a maximum of 30 weeks pay to a maximum of 36 weeks pay for individuals leaving the organisation in support of the delivery of the 2021/22 and 2022/23 budgets. Applications received under the enhanced scheme will be given consideration under these arrangements with the intention of supporting the release of staff prior to or early in the 2021/22 financial year.

2. To confirm that such an amendment is workable, affordable and reasonable having regard to the foreseeable costs.

3. Subject to the approval of Council to release the reserves required to implement this proposal, to confirm that the Deputy Chief Executive and City Treasurer, in consultation with the Director of HROD and the Executive Member for Human Resources, may release staff who make such applications subject to the criteria set out in the report.

4. Recommend that November 2020 Council formally confirm release of funds from reserves where appropriate to fund agreed releases.

Wards Affected: All

Implications for:

Equalities – An Equality Impact Assessment has been undertaken to ensure that the operation of the scheme does not discriminate against any groups.

Risk management – The scheme will need to be applied appropriately in order to ensure that the important skills necessary for the future needs of the Council's services are not lost, and where people are released promptly, disruption to services is managed on a practical level. The operation of the scheme has been developed to mitigate this risk.

Legal considerations – The proposed scheme will comply with the Council's legal obligations as an employer which are set out in more detail in the report.

Financial consequences – Revenue and Capital

The detailed financial consequences are set out in this report. The proposals and their impact on reducing the costs of the City Council will be a key part of the strategy necessary for the Council to set a balanced and lawful budget for 2021/22.

The costs of the scheme have been identified as being approximately £3.3M of which it is anticipated the capital costs of £1.1M will be funded through available allowances in the Manchester City Council Employer Pension Fund contributions. Should the capital costs exceed the available allowances this will be met from within the Council's reserves. This will be from the Transformation Reserve held to meet the costs of change and delivery of savings. The severance costs estimated at £2.2M will be met from directorate budgets.

Contact Officers

Name: Deb Clarke
Position: Director of HROD
Tel: 07812502614
Email: deb.clarke@manchester.gov.uk

Background Documents

Personnel Committee report: October 2014: Severance and Early Retirement (Efficiency) Policy Statement
Executive 14 October - Revenue Budget Monitoring 2020/1 and Budget Position 2021/22

1. Background

Dealing with the impact of COVID-19 has resulted in major spending pressures, particularly in social care, but also across all Directorates. The budget impact of COVID-19 up to March 2021 will be spread across the financial years 2020/21 and 2021/22 due to the way the council budgets for the airport dividend, parking income and the operation of the collection fund. The forecast budget shortfall relating to COVID-19 pressures is **£55.6m** this financial year increasing to **£160.1m** next year. The impact will likely continue to be felt beyond 2021/22. As set out in the report to Budget Executive on the 14th October 2020 the Council is facing a significant funding gap estimated at £105m for 2021/22, £159m for 2022/23.

Due to the scale of the budget gap consultation on some budget options will need to start in advance of the Spending Review and the Local Government Finance Settlement. A programme of c£50m cuts are therefore being put forward by officers for consultation now so they can be delivered in full for 2021/22.

2. Proposed approach

Any financial benefits of a proposed Efficiency Early Release Scheme will need to be assessed against the long term priorities of the organisation. The implementation of a scheme would need to be supported by the firm management of vacancies and performance, effective management of organisational change, and a focus on developing the skills and behaviours of the workforce. The future workforce will need to align to future needs to ensure the appropriate skills, behaviours and flexibility are developed to meet the challenges and priorities of the organisation.

In support of the likely level of savings required from the workforce, it is proposed to formally use the existing Efficiency Early Release Scheme with a time limited amendment to support delivery of the required reductions in workforce size whilst maintaining the necessary skill base. The proposal has been discussed with the trade unions and there will be ongoing consultation as set out below. The content of any severance package and the ultimate decision to release individuals will be at the discretion of the authority, in line with the terms of the scheme set out in this report.

The scheme will be targeted to focus on the ‘Officer Options’ that will be recommended to the Executive in November. The reduction required is c200 fte posts of which at least 70 fte posts are expected to be achieved through vacancies. In addition the Council has a number of posts on time limited funding and the scheme should also be made available to those individuals where it is known, or there is a real risk that the funding will end. It is therefore proposed that the scheme is targeted at the areas where the reductions are required. This will ensure that only employees who are able to be released are included in the scheme in order to manage expectations.

In addition there will be other parts of the Council where changes are being considered and it may be appropriate to offer the scheme. These will be considered on a case by case basis and will have the added value of adding some scope for redeploying talented people who no longer have a role.

In most areas where the reductions are required some changes to the structure and/or operating model are required. The scheme will therefore be made available to those service areas from November and aligned to the consultations and changes within the service area. As outlined above this will also be open to individuals on time limited funding where it is known that the funding will end or there is a significant risk it will do so and to others on a case by case basis.

Staff briefings for officers in services who are in scope for the scheme commenced in October 2020. Briefings will continue to take place in the lead up to the scheme and information will be made available to all employees and managers via a coordinated programme of communications.

The proposed reduction in workforce will require the Council to provide advanced notification of redundancies to The Insolvency Service in writing (using a HR1 form) and consult with the recognised Trade Unions, as appropriate employee representatives. This is the case even where the reduction can be achieved through voluntary means. The HR1 form will be submitted at the start of the formal consultation period in line with previous schemes, as failure to do so could render the Council liable to a fine and to Employment Tribunal claims.

Completion of the HR1 form also triggers Government departments and agencies and the 'Job Centre Plus' service to be alerted and prepared to take any appropriate measures to support the employees in question. A formal letter of consultation setting out the reasons for the scheme, and detail of numbers, selection criteria, timeframes, and redundancy pay calculation information, will also be shared with Trade Unions at the start of formal consultation (under Section 188 of Trade Unions and Labour Relations (Consolidation) Act 1992).

A programme of support coordinated through both the Job Centre Plus and internally has been provided throughout all previous time-limited schemes and a similar programme of support will be available early 2021 for those leaving the organisation. The range of available support and advice will be shared in detail in line with the timeline below.

The Council's non re-engagement policy will continue to apply. The current policy was approved by Personnel Committee on 27 June 2018 (as part of the Recruitment and Selection Policy) and states that employees who have previously left the employment of the Council through voluntary early retirement or voluntary severance cannot be re-engaged until a two year time period has lapsed after the termination of their employment. This includes re-engagement as a consultant or as agency staff. The policy update in 2018 includes an exemption for time limited elections roles, where work is confined to duties in connection with the election or electoral registration. It is proposed that this amendment will continue to apply to ensure sufficient staffing levels for upcoming elections.

3. Overview of the scheme

The scheme offered by Manchester City Council has two elements depending on the age of the applicant - for those aged 55 or over it is voluntary efficiency retirement, and for those aged under 55 it is voluntary severance. It is possible for those in the early retirement scheme to also receive an element of severance pay depending on overall cost and not breaching the affordability criteria as set out in Section 5 below. This is subject to changes in the exit pay regulations from 4 November 2020 and the pension scheme regulation changes coming onto force at a date yet to be determined.

The intention is to make a time limited amendment to the existing policy on Efficiency Early Release (Efficiency Severance and Early Retirement) as set out below. This remains a generous offer in the context of both comparable schemes and the statutory redundancy calculation and is the most attractive offer which is affordable to the authority.

Voluntary Efficiency Retirement

Release of early retirement benefits are governed by the Local Government Pension Scheme (LGPS) regulations for the majority of staff. In circumstances where the Council is looking to reduce the workforce, employees who apply for, and are released on, the grounds of efficiency when they reach the age of 55 currently must have their accrued pension put into payment and reductions are not applied. Individuals must have been members of the LGPS for two years in order to be eligible for release of pension benefits on these grounds. Employees who are aged 55 and have been members of the LGPS for at least two years will only be released for early retirement and will not be eligible to apply for voluntary severance only. Legislation relating to a cap on public sector exit payments comes into force on 4 November 2020. Further details on this are included in section 4 below.

It should also be noted that the Council has a successful record in keeping the employer pension contribution rate down in relation to the Local Government Pension Scheme due to very carefully managing pension strain costs (also referred to as capital costs). Releases under an Efficiency Early Release Scheme would impact Council liabilities. Any associated capital costs over the Council’s allowance for such releases would need to be met from the Council’s reserves. The number of releases under a scheme may also influence the next actuarial review of the pension fund.

Voluntary Severance

The existing policy on enhanced payments in respect of severance is based on the Local Government (Early Termination etc) Regulations 2006, which provide Councils with discretionary power to increase statutory redundancy payments and make discretionary termination payments. The Council’s current policy is to exercise its discretion to base calculations for voluntary severance payments on employees’ actual pay at three weeks’ pay per year of service, to a maximum of 30 weeks.

This is significantly higher than the statutory redundancy payment and aims to incentivise staff under the age of 55 years to consider the option of severance. Uptake of severance would provide an age spread of staff taking up the offer. As severance costs are generally less expensive than release of pension with associated costs, a higher proportion of severance will reduce the Council’s financial liabilities.

Severance payments are tax free up to £30,000. However, since 2018 legislation has dictated that payment in lieu of notice is subject to tax and national insurance deduction and therefore if agreement is provided to allow notice to be waived this will be less attractive than in previous years. Consideration also needs to be given to skills transfer and providing time for the employee to take annual leave before their departure.

4. Exit payments

The government has been consulting for some time on a public sector exit payments cap. They have now rushed this legislation through.

New legislation which will amount to a total cap of £95,000 on exit payments within public sector organisations became law on 4 November 2020. Payments included are redundancy payments (including statutory redundancy payments), severance payments, and pension strain costs (capital costs). This will have an impact on employees who apply for release under the Efficiency Early Release Scheme (Efficiency Retirement). However further regulations introducing additional changes to the local authority pension scheme (outlined below) are in draft form but there will be a delay in these regulations coming into force as the second stage of consultation does not conclude until 9 November 2020 and there may be further changes to the regulations as a result of the consultation,

Based on information from previous schemes only a small number of employees are likely to be impacted by the cap. Some initial guidance was released by the Ministry of Housing, Communities and Local Government (MHCLG) on 28 October 2020 to provide direction where an employee who is supported for release has an exit package that exceeds the £95,000 cap. Under current pension regulations employers are still required to pay an unreduced pension but legally are unable to do so where the cap applies. However, further guidance and legal advice is required to enable the authority to act in this situation. Where the cap applies, employee applications will be placed on hold until we are clear on this matter. Employees will be advised of their right to withdraw their application in this situation.

The MHCLG consultation which relates specifically to the impact of the changes to the local authority pension scheme, is due to conclude on 9 November and it is anticipated that the changes required will be made law by the first quarter of next year (the actual date is currently unconfirmed). The changes are significant and will impact the majority of employees aged at least 55 who leave the organisation via Early Retirement. In most cases employers will not be able to make a discretionary severance payment in addition to paying any capital costs associated with pension release. Employees will be given a choice to either accept the discretionary payment and receive a reduced pension, to receive an unreduced pension (within the £95,000 limit) without further payments, or to defer their pension to normal retirement age (or earlier with reduction). Employees who defer their pension would be eligible to receive the discretionary severance amount. A maximum salary cap of £80,000 for severance calculations will also apply.

The changes will have an impact on the delivery of the scheme. In the event that the pension regulation changes come into force during the operation of the scheme, all pension estimates incurring capital costs will need to be recalculated. The changes will be communicated to employees to enable informed decisions and employees will be given the right to pause and/or withdraw their application. However, as the changes are new and have a significant impact on the pension regulations it is likely that this will cause delays to releases.

5. Operation of the Scheme

If the proposal is accepted all eligible employees will be contacted by letter prior to the launch of the scheme to advise of the terms of the scheme and to provide them with an indication of their potential leaving benefits. Applications for release will be invited for a time limited period (Monday 23 November 2020 to Friday 11 December 2020). Should further budget cuts be required then the scheme will be extended to accommodate those reductions, this extension will ensure the required capacity to achieve the second round of options for savings without necessitating a further report to Personnel Committee as they would be on the same basis as described here. Applications will be considered individually in line with service plans. Consideration and the content of any severance package will be at the absolute discretion of the authority and will take account of two broad decision making criteria:

a. The total cost of the severance package

Release will only be agreed where this would enable the organisation to realise a financial saving or avoid costs. In general, this means release will **not** be agreed where the cost to the authority, including any capital costs for the Council associated with early pension payment, exceeds the equivalent of 18 months salary or exceeds the £95,000 exit payment cap.

b. Impact on business continuity and delivery

Release will only be agreed where it will not have an adverse impact on delivery of the organisation’s priorities and transformation in line with agreed delivery models and design principles at service level.

The task of service and directorate management in partnership with HR and OD will be to assess how any risks under b. above can be mitigated in order to agree the release of the individual in a timely and appropriate way. This will include a time bound assessment of how movement though m people can be used to replace skills or reorganise functions.

The intention is to support the majority of staff to leave the authority prior to or early in April 2021. This will rely on effective and timely decision making. The vast majority of decisions may not be made until after the scheme closes for applications in order to enable informed and coordinated consideration of all applications in the round. However, in some cases it may be possible to agree release prior to this where the decision making criteria above are satisfied and there will be no impact on the proposed outcome associated with future potential applications.

It should be noted that the formal period of consultation relating to the scheme closes on 28 December 2020 and therefore it is not anticipated that outcomes will be communicated until week commencing 4 January 2021.

6. Financial implications

If the net number of posts released is c110fte based on the current officer options and number of vacancies, using an average salary and average mix of VER/VS and capital costs the estimated costs are £1.1m for the capital costs and £2.2m for the voluntary severance. Clearly these are just estimates and the actual costs will be different.

- The voluntary severance costs, estimated at £2.212m, will not be explicitly provided for as they will be met from the Directorate budget held to fund the post. This means that a significant proportion of the workforce saving options would only achieve a part year saving in 2021/22 with the full year being achieved from 2022/23.

- It is anticipated that the costs associated with early retirement, estimated at £1.048m can be covered through the annual allowance from the LGPS. This is established from the councils pension contributions to fund the capital costs of early retirement through ill health or other reasons including Efficiency Early Release. Should the allowance not be sufficient it is proposed any balance is met from the transformation reserve.

It should be noted any use of the transformation reserve reduces the capacity to use reserves to smooth the required budget reductions.

7. Amendments to the non re-engagement policy

It is vital to ensure that sufficient experienced employees are either retained or otherwise available in order to deliver future elections effectively in May 2021 and beyond. It will not be possible for employees who do not have experience to gain the necessary level of experience prior to the upcoming election. Given the potential number of employee reductions it is inevitable that the Council will lose officers with practical experience of delivering elections.

The Council's non re-engagement policy will continue to apply. The current policy was approved by Personnel Committee on 27 June 2018 (as part of the Recruitment and Selection Policy) and states that employees who have previously left the employment of the Council through voluntary early retirement or voluntary severance cannot be re-engaged until a two year time period has lapsed after the termination of their employment. This includes re-engagement as a consultant or as agency staff. The policy update in 2018 includes an exemption for time limited elections roles, where work is confined to duties in connection with the election or electoral registration. It is proposed that this amendment will continue to apply to ensure sufficient staffing levels for upcoming elections.

Personnel Committee is recommended to note the application of this policy. Personnel Committee is also recommended to note that that appointment of former employees to any role that is appointed directly by the returning officer is not within the scope of the non re-engagement policy.

8. Implications for Manchester

Reducing employee numbers in a managed way will support the budget savings required. However, a large proportion of employees are Manchester residents and a range of support options will be available to all leavers.

9. Conclusion

Adoption of the proposed scheme will assist in enabling the necessary reduction in staffing numbers to support the delivery of planned changes to the organisation over the coming two years and deliver the associated efficiencies. This approach will enable reductions to be managed in a controlled way, which is viable and supports ongoing services, projects and priorities. This approach will be supported by a continued focus on workforce skills and behaviours.

If the proposed scheme does not meet the necessary savings target, other options, including a compulsory redundancy scheme, would have to be considered.

10. Comments of the Director of HR / OD

As set out in this report.

11. Comments from Trade Unions

UNISON note the scheme and that the council is choosing to use the enhanced scheme of 36 weeks severance pay that it has used over the last 10 years when it has had to reduce the workforce due to cuts to its finances instead of the standard 30 week scheme, we welcome this scheme.

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Manchester City Council
Report for Information

Report to: Personnel Committee – 11 November 2020

Subject: Exit Pay Cap

Report of: Director of HROD

Summary

The exit pay cap which establishes an overall cap on a range of public sector bodies including local authority exit payments of £95,000 became law on 4 November 2020. Further regulations which were subject to consultation via the Ministry of Housing, Communities and Local Government (MHCLG) close on 9 November 2020. The combined effect of both the exit regulations and the consultation regulations which relate to changes within the Local Government Pension Scheme Regulations are to limit the value of public sector exit packages.

There is a distinct level of concern around the process, drafting, and substantive legality of the regulations. This has resulted in a number of challenges to Government from a variety of different organisations. In line with this a response to the MHCLG consultation and concerns relating to the implementation of the reforms has been provided on behalf of Manchester City Council. The letter was submitted prior to 9 November in line with the consultation deadline.

Recommendation

To note the representations made to Government in response to the implementation of the exit pay cap and the MHCLG proposals for reforms to local government exit pay.

Wards affected: All

Contact Officers:

Name: Deb Clarke
Position: Director of HR and OD
Telephone: 07812502614
Email: deb.clarke@manchester.gov.uk

1.0 Overview

1.1 In 2015 the Government announced that it intended to consult on cross-public sector action on exit payment terms to reduce the costs of redundancy payments for the taxpayer and ensure greater consistency around the value of exit payments. The headline element of these reforms was a proposed cap of £95,000 on exit payments for all relevant bodies, inclusive of the cost of pension strain. Wider reforms to redundancy payments were also proposed.

1.2 Consultation relating to this took place in April 2016 and, following a period of hiatus, the Government released a further consultation on 10 April 2019. This included draft regulations and associated guidance. A response to this consultation was published on 21 July 2020.

1.3 The regulations specifically relating to the overall cap of £95,000 have now been passed in Parliament and became law on 4 November 2020.

1.4 The Ministry of Housing, Communities and Local Government (MHCLG) have undertaken a further consultation relating to the effects and impacts of the proposals on the local government workforce and specifically the implications for the Local Government Pension Scheme (LGPS). The proposed changes to the pension scheme regulations have a wide reaching impact on those who leave the organisation aged 55+ via early retirement. This consultation closed on 9 November 2020 and the changes relating to the pension regulations will come into force at a date not yet determined.

2.0 Details of the proposals

2.1 The absolute cap on exit payments applies to most payments made as a consequence of termination of employment. This includes redundancy payments (including statutory redundancy payments), severance payments, and pension strain costs (capital costs) which arise when an LGPS pension is paid unreduced before a member's normal pension age.

2.2 In addition to the overall cap on exit payments the government is also proposing a number of maximum tariffs for calculating exit payments. These are outlined below:

- Maximum of 3 weeks pay per year of service
- Maximum of 15 months pay on the redundancy amount
- Maximum salary of £80,000 on which exit payments can be based

2.3 The MHCLG consultation centred on the Local Government Pension Scheme regulations and changes which will potentially impact a large proportion of employees. The proposals are summarised below and are relevant to all employees aged at least 55 in the pension scheme who leave the organisation either via dismissal from employment on redundancy or business efficiency grounds, or termination of employment by mutual consent on business efficiency grounds:

1. The strain cost (capital cost) cannot exceed the overall cap contained in the Exit Payment Regulations (£95,000)
2. The pension strain cost (capital cost) will be reduced by the value of any Statutory Redundancy Payment required to be paid
3. If there is a capital cost to be paid the employer cannot offer a discretionary severance payment in addition (unless the discretionary amount is more than the capital cost then the difference can be paid which is rare)
4. Any reduction in the strain cost due to the above limitations may be made up by the worker from their own resources
5. The member will receive an actuarially adjusted pension benefit in line with the revised strain cost under these provisions.

2.4 In a redundancy situation the employee will receive their statutory redundancy payment and may then use this amount to offset the capital cost paid by the employer in order to mitigate the pension reduction.

2.5 Discretionary severance payments are made to MCC employees who leave via the Efficiency Early Release Scheme (Early Retirement) where either there is no capital cost to pay or where the capital cost is less than the affordability limit (in previous schemes this has been set at 1.5x the employee's salary). In the second instance the difference is paid as severance to the employee.

2.6 When the regulations become law employees will have a choice to defer their pension to normal retirement age or to take it at any date before then in which event there may still be a reduction to their pension. In this case the employee would be entitled to a discretionary payment as no capital cost would be payable.

3.0 Key issues

3.1 There are a number of issues related to the above which present an immediate challenge for local authorities. The first issue relates to the fact that bringing the Exit Regulations into force before the outcome of the MHCLG consultation is known creates a situation where for an unknown period of time the cap will be partly implemented for those in the Local Government Pension Scheme. It is worth reiterating that the introduction of these changes was over 4 years ago, so the reasons for this sudden approach and timing are unclear.

3.2 The two sets of regulations in force conflict dependent upon their interpretation, and the disparity in the implementation dates make it extremely difficult for employers to manage workforce reform in the interim.

3.3 There is nothing in the Exit Regulations which has the effect of altering or removing the entitlement to an immediate, unreduced pension where that entitlement arises under r.30 of the Local Government Pension Scheme Regulations 2013 in redundancy and efficiency dismissals of those aged 55+. The Exit Regulations potentially remove the ability of an employer to make a pension strain payment where that would breach the cap. It therefore follows that in a case where the employee's exit package exceeds the cap, the employee concerned will still be entitled to an immediate, unreduced pension but the administering authority may not be able to call upon the employer to make the full strain payment for cases breaching the £95,000 cap under r.68 of the LGPS Regulations as a result, so that the relevant cost may fall on the pension fund instead.

3.4 This places a burden on the pension fund and in the longer term this burden will need to be recovered. One likely outcome will be an increase in future employer rates which places the financial burden back on the employer in the form of increased contributions and defeats the purpose of the cap as the cost comes back to the employer in another format.

3.5 Furthermore, the regulations reduce the pension benefits that an individual would receive significantly below the level that he or she could have had in the recent past and therefore have the effect of removing a past entitlement. An employee's service accrues certain pension rights and any change to accrual rules for a retrospective period in effect takes away what the employee has already earned and may be a breach of their rights.

4.0 Equality considerations

4.1 The proposals mean that serving local government staff will suffer potentially significant adverse impacts on their financial position if made redundant, compared to previous long-standing arrangements which were part of the pension scheme reforms negotiated and agreed with employers and unions in 2013. The impact of the regulations goes beyond those impacted by the cap. A draft assessment by the Government Actuary’s Department shows that 86% of staff who were made redundant in the period from 2013-2016 would have received lower benefits as a result of the proposals, with an average negative impact of £13,000. Additionally, the top 10% of people impacted by the proposals would suffer an average impact of 47.5%.

4.2 The regulations will have an adverse effect on particular groups including: anyone over the age of 55, with an even more severe impact for those who are closer to 55 (for whom pension strain will, on average, be higher than those who are closer to normal retirement age); and anyone approaching the age of 55 in the next few years.

4.3 In addition to the above, it is clear that those on average salaries with long service are likely to be impacted by the cap. Models have been done which show how including pension strain within the cap would affect long-serving staff earning well under £40,000. The pension strain for staff in their mid- to-late 50s in one council, with service in the range of 35 to 39 years and earning between £31,000 and £34,000 would exceed £100,000 if made redundant. The redundancy payments in each case would be well under £20,000. The Treasury regulations which cap exit payments at £95,000 would mean that they would all suffer a reduced pension, for the rest of their lives.

4.4 It must also be noted that the specific proposals within the MHCLG consultation mean that local government staff will be treated more severely than others across the public sector. Government is not proposing or implementing similar reforms for other public sector workers.

5.0 Recommendations

5.1 There is a distinct level of concern around the process, drafting, and substantive legality of the regulations. This has resulted in a number of challenges to Government including British Medical Assocation's (BMA) application for judicial review. GMB is considering action, and UNISON are sending a pre-action letter as have Lawyers in Local Government (supported by ALACE and SOLACE).

5.2 Personnel Committee is requested to note the letter attached (Appendix 1) which outlines the concerns that the authority has in relation to the introduction of the exit pay cap and specifically the timing of the legislation, and the impact that the proposed changes will have on a large number of local government employees. The letter also includes response to the MHCLG consultation. This letter was submitted prior to the closure of the MHCLG consultation on 9 November 2020.

6.0 Conclusion

6.1 The implications of the changes in law in respect of public sector exit payments go way beyond the original intention of the legislation. They will serve to impact a large proportion of long serving local authority employees, affecting particular groups more than others. The drafting of the legislation and the timing of the separate regulations create both distinct and substantial immediate challenges for the authority. On this basis the response to the consultation and wider concerns relating to the exit payment cap have been provided to Government.

7.0 Comments from Trade Unions

7.1 It is with great disappointment and anger that UNION are having to respond to this item. Our national union has sent a before action letter to the Treasury Secretary regarding this matter outlining breach of contract and discrimination.

7.2 The decision to impose this exit cap on council staff in the local government pension scheme is callous and contemptible.

7.3 Staff in local government have, through years of austerity cuts, always delivered first class services for our residents.

7.4 Throughout the initial lockdown staff stepped up and were delivering services to residents in unprecedented ways and our staff will do the same again when we go into the second lockdown on tomorrow 5.11.20.

7.5 It is shameful that this government has chosen to reward council staff with this further attack by bringing this cap into law, it will impact so many hard working staff who may consider leaving the council to support the budget decisions that are being currently consulted on, staff who do not earn the national average salary will see their pensions reduced.

7.6 The government has not produced an equality impact assessment to support their horrendous decision. It is yet another knee jerk reaction by this government, who only 11 months ago promised, prior to the election that there would be a levelling up across the country, but clearly not for council workers.

7.7 We welcome the letter sent by Manchester City Council and hope this woeful decision to penalise council staff will be reversed.

7.8 The government can no longer hide behind the mantra there is no money as they have handed out billions of pounds worth of contracts during this pandemic, without a transparent tender process, to inadequate companies who can not deliver, and are now suggesting the responsibility of the work that is need to be done from these failing contracts may fall to local councils to deliver. The government promised councils at the start of the pandemic that they should spend whatever is needed to to keep residents safe, councils were mindful with their spend as they know that the money spent is from the public purse but yet again this government has failed to stick to what they promised.

7.9 So it is with great anger we note this report and it’s appendices.

MANCHESTER
CITY COUNCIL

Telephone:
e-mail:
Address:

Date:

Dear Sir/Madam,

Re: EXIT PAYMENT CAP AND MHCLG PROPOSALS FOR REFORMS TO LOCAL GOVERNMENT EXIT PAY

I am writing on behalf of Manchester City Council in formal response to the Ministry of Housing, Communities and Local Government (MHCLG) consultation 'Reforming Local Government Exit Pay' and to set out our specific concerns relating to the introduction and timing of the exit pay cap and reforms specific to local government employees.

Exit pay cap and timing of the proposals

The Restriction of Public Sector Exit Payments Regulations 2020 (Exit regulations) came into force on 4th November 2020. We are concerned that bringing the Exit Regulations into force before the outcome of the MHCLG consultation is known creates a situation where for an unknown period of time the cap will be partly implemented for those in the Local Government Pension Scheme. It is worth reiterating that the introduction of these changes was over 4 years ago, so the reasons for this approach and timing are unclear.

The two sets of regulations in force conflict dependent upon their interpretation, and the disparity in the implementation dates make it extremely difficult for employers to manager workforce reform in the interim.

The Exit Regulations do not change the entitlement to an immediate, unreduced pension where that entitlement arises under r.30 (7) of the Local Government Pension Scheme Regulations 2013 in redundancy and efficiency dismissals of those aged 55+. We do not accept the suggestion in the letter dated 28th October from Luke Hall that Authorities can rely on a combination of Regulation 8 of the Exit Payments and section 30(5) of the Pensions Regulations until the Pension Regulations are amended. The Exit Regulations may simply remove the ability of an employer to make a pension strain payment where that would breach the cap and do not affect the employee's entitlement to an immediate unreduced pension.

This places a burden on the pension fund and a conflict between employers and the pension fund and in the longer term this burden will need to be recovered. One likely outcome will be an increase in future employer rates which places the financial burden back on us as a local authority, in the form of increased contributions.

At a time when many local authorities are facing unprecedented financial challenge and are having to consider workforce reform the uncertainty created by the implementation of the Exit Regulations without the corresponding changes to the Pension Regulations is particularly unhelpful.

Finally and importantly, the regulations reduce the pension benefits that an individual would receive significantly below the level that he or she could have had in the recent past and therefore have the effect of removing a past entitlement. An employee's service accrues certain pension rights and any change to accrual rules for a retrospective period in effect takes away what the employee has already earned.

We call on Government to reflect on the united opposition from employers and unions to the exit cap regulations and their damaging impact on local government's ability to implement reform. If the Government wishes to proceed with regulations, to hold urgent discussions with representatives of employers, and relevant unions in order to address the concerns that have been raised.

Response to the MHCLG consultation

In response to the questions set out as part of the consultation, Manchester City Council echoes the responses made by the Association of Local Authority Chief Executives (ALACE) with specific points and concerns outlined below.

Manchester calls on MHCLG not to proceed with its proposals and not to make the regulations as drafted. Any regulations following this consultation should be limited to the bare minimum to implement the £95,000 cap (but removing the retrospective element by making clear that only pension strain for service on or after 4 November 2020 can count towards the cap).

The other proposals to reduce exit payments in local government should not be progressed because they have an adverse impact on local government employees. Such proposals have not been implemented in this way for other parts of the public sector. The Government should bring forward simultaneous proposals for all public sector workers if it wishes to proceed. In line with this Manchester City Council opposes the principle of including pension strain within the exit payment cap.

These proposals form part of the most damaging attacks on the terms and conditions of local government staff for decades, dismantling long-established norms and without full consideration of the serious impact that they will have on individuals. We have serious concerns about many aspects of the Ministry's proposals and believe that, if the exit payment reforms are not abandoned altogether in the light of the legal objections now being raised by several organisations, a fundamental rethink is required alongside appropriate transitional non-discriminatory arrangements and introduction of flexibilities for individuals.

Our principal concerns are:

(a) The Ministry's proposals go far beyond the approach that Parliament has authorised or required in respect of the £95,000 cap. If someone's exit payment on redundancy would be over £95,000 under current rules, they should receive direct or indirect benefits worth £95,000 and not a penny less. No one whose exit costs are less than £95,000 should suffer any impact: they should receive a redundancy payment in accordance with the amended rules on discretionary compensation plus their immediate, unreduced pension. The draft assessment by the Government Actuary's Department shows that 86% of staff who were made redundant in the period from 2013-2016 would have received lower benefits as a result of the proposals, with an average negative impact of £13,000. This is particularly pertinent to this argument and shows clearly the impact on most local government employees, not just high earners.

(b) In addition to the above, those on average salaries with long service will be impacted by the cap. Models have been done which show how including pension strain within the cap would affect long-serving staff earning well under £40,000. The pension strain for staff in their mid- to-late 50s in one council, with service in the range of 35 to 39 years and earning between £31,000 and £34,000 would exceed £100,000 if made redundant. The redundancy payments in each case would be well under £20,000. The Treasury regulations which cap exit payments at £95,000 would mean that they would all suffer a reduced pension, for the rest of their lives.

(c) In addition, the maximum range of flexibilities is required for anyone affected by the exit payment cap in managing the impact on their pension. This will include changes being made to the taxation regime for pensions.

(d) The exit payment cap urgently needs to be uprated from £95,000 and uprated annually thereafter.

The implications of the changes in law in respect of public sector exit payments go way beyond the original intention of the legislation. They will serve to impact a large proportion of long serving local authority employees, affecting particular groups more than others. We call on Government to carefully consider the points raised in this letter. If the Government wishes to proceed with regulations, to hold urgent discussions with representatives of employers, and relevant unions in order to address the concerns that have been raised.

Yours sincerely,

Deb Clarke
Director of HR and OD
Manchester City Council

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