

Report of: Assistant Chief Executive, Governance and HR

Meeting of:	Date	Ward(s)
Audit Committee	22 September 2015	All

Delete appropriate	as	Exempt	Non-exempt
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APPENDIX 4 TO THIS REPORT IS NOT FOR PUBLICATION

SUBJECT: TERMINATION PAYMENT POLICY

1. Synopsis

1.1 The Policy and Performance Scrutiny Committee undertook a scrutiny of the council's use of termination payments to staff. As a result of the scrutiny, that committee recommended that this Audit Committee review the council's policy in respect of termination payments to staff, including making some recommendations as to what the policy should contain. This report reviews the current policy and considers the legal and financial implications of the specific recommendations from the Policy and Performance Review Committee.

2. Recommendations

2.1 To note the content of this report and that the Government intends to implement legislation to impose new governance arrangements in respect of termination payments to council staff.

2.2 To agree to receive a further report on termination payments when that legislation is in place in order that the council's processes can be amended to comply with the new requirements.

3 Background

- 3.1 The Policy and Performance Scrutiny Committee considered two reports on the issue of Termination Payments to staff, particularly more senior staff, as part of a scrutiny earlier this year. For the purpose of the review, 'termination payments' covered redundancy, payment in lieu of notice and any additional payment under the Local Government (Early Termination of Employment) Discretionary Compensation Regulations. Arising out of that scrutiny, the Policy and Performance Committee made four recommendations to this Audit Committee which are discussed in section 5 of this report. The current termination payment arrangements are summarised below.
- 3.2 The Policy and Performance Scrutiny Committee also requested that this Audit Committee be provided with information regarding recent arrangements concerning three specific members of staff and these details are contained in exempt Appendix 4.

Current Termination Payment Policies

- 3.3 Any council officer whose role is terminated on the grounds of redundancy has a contractual entitlement to a redundancy payment if they have two years' continuous employment and may receive discretionary payments in the event of termination for redundancy or on efficiency grounds. Those who volunteer for redundancy under the council's Voluntary Redundancy Scheme are entitled to an additional £500. There is a report to the committee on tonight's agenda proposing an increase in this amount.

3.4 Redundancy entitlement

The general redundancy payments policy applies only to employees with two or more years' continuous service with a body listed in the Redundancy Payments (Continuity of Employment in Local Government) Modification Order.

Actual salary rather than the statutory weekly maximum is used for this calculation as permitted by the Local Government (Early Termination of Employment) (Discretionary Compensation) (England & Wales) Regulations 2006 (as amended).

3.5 Discretionary Payments

The Council may use its discretion under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England & Wales) Regulations 2006 (as amended), in exceptional circumstances, to pay a lump sum of up to a total of 2 years (104 weeks) actual pay without any salary cap as a compensatory payment to any employee (eligible for the Local Government Pension Scheme) whose employment is terminated by reason of redundancy or in the interests of the efficiency of the service, including early retirement, in accordance with the council's adopted policy.

3.6 Early retirement

An employee who is a member of the pension may, on attaining the age of 55 years, choose to take early retirement. An employee electing to retire early will normally have the benefits they are entitled to reduced on an actuarial basis to reflect that they are receiving them earlier than the normal retirement age under the scheme.

An employee who is dismissed on redundancy or efficiency grounds after they have reached the age of 55 years will be entitled to their pension without any actuarial reduction being applied. This leads to pension strain because the payments being made are not fully supported by existing contributions to the scheme. The council is required to make a payment into the pension scheme to cover this strain. This represents an additional cost when employees aged 55 or over leave by reason of redundancy or efficiency.

4.0 Governance processes

4.1 There are a number of thresholds which trigger governance requirements to ensure that termination payments are lawful and appropriate. In calculating the amount of a proposed payment for this purpose, the following elements of the payment are taken in to account:

- Redundancy payment
- Any additional payment under the Local Government (Early Termination of Employment) Discretionary Compensation Regulations
- Payment in lieu of notice.

Pension strain is not currently taken into account.

4.2 Payments under £50,000:

Any payments under £50,000 can be approved by a Service Director within the Finance directorate. A form is generated by the HR/Payroll team and passed to Finance for approval. Once approval is received the payment is processed.

4.3 Payments to Chief Officers and other payments of £50,000 to £99,999:

For payments where the proposed payment is to a Chief Officer or exceeds £50,000 a report is prepared by the manager of the employee to whom it is proposed the termination payment be made. A standard template is available (See Appendix 1). Payments proposed must be in accordance with council policy, in particular the council's Discretionary Compensation Policy. The termination payment report must be approved by the Section 151 Officer and the Monitoring Officer (or their duly authorised deputies) and a final decision concerning it made by the Chief Executive before any commitment to make the payment is made, whether in correspondence, discussion or in a compromise, settlement or other formal agreement.

4.4 Payments in excess of £100,000:

The Audit Committee (or its Personnel Sub-Committee) will approve any termination payment to any officer which exceeds £100,000. For this purpose, the pay in lieu of notice element of the calculation only includes payments under the specific provision for 6 months pay in lieu of notice where a Chief Officer's contract is terminated in the interests of efficiency. This ensures that elected councillors are accountable for payments made in these circumstances. This reflects the requirements of the Pay Policy Statement adopted annually by full Council.

5.0 Recommendations from Policy and Performance Scrutiny

5.1 Recommendation (i)

That all future payments made in relation to terminating employment for staff should identify the types of payments made to such staff, and the explanatory reasons for such payments. In addition, if payments on the grounds of efficiency, or a compensation payment/payments in lieu of notice are made, such payments should be clearly documented with the reasons therefore.

The different types of payments made to individuals on the termination of their employment are recorded in the Payroll system.

The following forms are completed to record special payments being made in particular circumstances.

- Where employees are dismissed for redundancy or on grounds of efficiency, a form RER1/2 is completed (see appendix 2). A compulsory redundancy will normally be preceded by a detailed reorganisation report.
- Where an employee retires through ill health, form (tier 1-3) is completed (see appendix 2)
- Where an employee departs under the terms of a compromise agreement, the agreement contains the details of payments agreed to be made.
- Where an employee elects to take early retirement, form RER1/2 is completed.

Where the council gives notice to an employee, the termination letter will also set out the payments that are to be made, including whether there is to be any payment made in lieu of notice or of annual leave.

No particular form is required where an employee is to be paid in lieu of notice or in lieu of accrued or untaken annual leave and the instruction to HR to make the payment will normally be included in an email. A new requirement to retain any such instruction on the employee's personal file could be introduced.

The main concern of the Policy and Performance Scrutiny Committee was the transparency of, and accountability for, termination payments made to Chief Officers. It is proposed that the Audit Committee in future receive an annual report summarising termination payments made to Chief Officers in the previous financial year and the reasons for them. The report could also cover

all redundancy payments approved by the Chief Executive under the existing governance procedures.

5.2 Recommendation (ii)

That there be a cap for all future compensation/termination payments, in line with the current cap already in place across the public service and civil service, being a maximum of £100,000 as at June 2015.

It is not currently the case that there is a cap on compensation/termination payments across the public and civil service of £100k. The current position in the NHS and the Civil Service, for example, is set out in Appendix 3. It was announced in the Queen's Speech that a new Enterprise Bill would be brought forward which would contain provisions to cap exit payments in the public sector. A consultation paper has recently been issued.

This consultation seeks views on a proposal to legislate for a £95,000 cap on the total value of exit payments made to an individual in relation to their exit from public sector employment. The proposal is that the cap will cover payments made in relation to leaving employment, including:

- voluntary and compulsory exits
- other voluntary exits with compensation packages
- ex gratia payments and special severance payments
- monetary value of any extra leave, allowances or other benefits granted as part of the exit process which are not payments in relation to employment payments or compensation in lieu of notice and payments
- relating to the cashing up of outstanding entitlements (such as outstanding leave or allowances that are cashed up and added to the value of the sum)

- It is proposed the following will not be in scope: compensation payments in respect of death or injury attributable to the employment, serious ill health and ill health retirement
- payments made following litigation for breach of contract or unfair dismissal

It is proposed that the cap of £95,000 will include cash lump sums, such as redundancy payments; the cost to the employer of funding early access to unreduced pensions for employees where available; and other non-financial benefits, such as additional paid leave. The cap of £95,000 on the total value of the exit payment will apply whether these benefits were taken individually or in combination. It is envisaged that there will be scope for exceptions to be agreed by Full Council in accordance with a policy to be adopted by the council. It is not clear what the parameters of such exceptions may be.

In addition the office of Tax Simplification (OTS) is currently conducting a consultation exercise to explore how the tax and NICs treatment of

termination payments can be made simpler and fairer. Consideration is being given to removing the distinction between contractual and non-contractual termination payments. Currently, the first £30,000 of a non-contractual termination payment is tax free and removal of this threshold will affect net payments. This consultation is due to close on 16 October 2015.

As there will shortly be specific legislation in this area, it is suggested that rather than making changes now to Islington's local arrangements (which are likely to need further changes once the new legislation comes into effect) the committee may wish to ask for a further report to be brought forward once the final detail of the legislation is known.

5.3 Recommendation (iii)

That all termination payments for staff graded PO8 and above should be signed off either by the Chief Executive or the Audit Committee, depending on the sum involved. The Audit Committee may wish to reconsider the current financial limits for allowing the Chief Executive to sign off payments to staff to allow more Member scrutiny of such payments made.

Between 1 April 2012 and 31 March 2015 there were 31 leavers receiving exit payments graded at PO8 and above. Of these, 23 were graded PO8 – PO11. The total termination payments as defined excluding on-costs for these 31 leavers amounted to £1,038,543.48, excluding a pension strain of £934,799.92. See tables below for details.

Numbers

Year	PO 8 – 11	CO grade	Other (Public Health)	Total Numbers
2012	5	0	0	5
2013	9	4	0	13
2014	7	3	0	10
2015	2	0	1	3
Total	23	7	1	31

Costs

Payments (excluding pension strain)	Number	Average Payment	Pension strain average (where applicable)
<£50,000	27	£15,967	£58,425
>£50,000+	4	£70,368	0
>£100,000+			

These figures indicate that during the 3 year period considered, if all termination payments (i.e. redundancy, efficiency, PILON) to staff PO8 and above had required approval of the Chief Executive (or the Audit Committee if the payment exceeded £100k as is the current requirement), those requiring approval would have totalled:

Chief Executive Approval – 31 (4 under current governance arrangements)

Audit Approval - 0

These figures increase if Recommendation (iv) of the Policy and Performance Committee is taken into account as shown in paragraph 5.4 below.

5.4 Recommendation (iv)

That when considering termination/other payments to staff consideration should also be given to the pension strain that the termination will cause

Of the 31 termination payments referred to above, 15 did not have a pension strain associated with them.

Of the remaining 16 payments, if pension strain had been included in the calculation when deciding what governance rules applied under existing rules, 6 employees not covered by the existing rules would have needed to be approved by the Chief Executive and 6 by the Audit Committee.

If pension strain for staff at grades below PO8 were also considered, this would further increase the number of termination payments caught by the existing thresholds in the current governance arrangements.

The specific legislation consulted on by the government includes a proposal that pension strain be included in the calculation of termination payments. It is suggested to the committee that rather than making changes now to Islington's local arrangements (which are likely to need further changes once the new legislation comes into effect), the committee may wish to await the further report referred to above once the provisions of the new legislation are settled.

5.5 General observations

Increased oversight by Audit of the use of termination payments will improve transparency and accountability for termination payments. However, this needs to be balanced with enabling efficient management of departures from the council, in particular through necessary service re-organisations. Increasing the number of decisions which have to be referred to the Chief Executive or, particularly, to the Audit Committee, is likely to delay implementation of restructures while decisions about these members of staff are awaited. It may also have a dampening effect on volunteering for redundancy, particularly at middle and more senior levels. The voluntary

redundancy scheme report also on tonight's agenda highlights the advantages of a successful voluntary redundancy scheme.

- 5.6 The proposed annual report to the Audit Committee would enable the Audit Committee to have oversight of high value payments without a negative impact on efficiency. Prior approval for payments over £100k would still be required.
- 5.7 In any event, if an employee is made redundant in circumstances where the resulting pension strain causes £100k to be exceeded, there will nonetheless be an obligation under the LGPS for the pension strain to be incurred. Any cap would therefore have to leave room for exceptions in this and other circumstances.

6.0 Implications

Financial implications:

The report sets out the current financial position on termination payments and recent termination data. The proposed annual report to the Audit Committee strikes a reasonable balance between the need for scrutiny and the need for the prompt exercise of management discretion in an environment of significant annual savings. Given the government intends to legislate on termination payments it is sensible to wait for such legislation before amending the Council's current policy.

Legal Implications:

The council's current termination payment approval process in Appendix 1 makes specific provision for approval of termination payments in the context of Employment Tribunal proceedings to ensure the best outcomes for the council can be achieved. Other Legal Implications are set out in the body of the report.

Environmental Implications:

None

Resident Impact Assessment:

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

When making decisions individual decisions under the Termination Payments

Procedure the council's equalities obligations must be observed. Pension strain costs are generally only incurred in respect of employees aged 55 and the obligation to avoid discrimination on grounds of age would need to be carefully considered in respect of decisions involving pension strain.

7.0 Conclusion

This report provide the committee with legal, HR and financial advice on the recommendations it received at its last meeting from the Policy and Performance Scrutiny Committee. It is proposed that in order to increase transparency and accountability in respect of termination payments to staff, the Audit Committee receive an annual review report covering significant termination payments. In view of the government proposals to introduce legislation addressing many of the issues raised by the Policy and Performance Scrutiny Committee, it is recommended that the committee consider making changes to the council's procedure only once the content of that legislation is finalised and that a further report be brought to the committee at that time

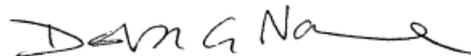
Appendices:

- 1 Procedure for approval of termination payments
- 2 Existing Forms
- 3 Severance Pay In Parts Of The Public Sector

Background papers: - NONE

Final report clearance:

Signed by:



14 Sept 2015

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Date

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Appendix 1

Procedure for approval of termination payments

- 1 This procedure applies to termination payments to Chief Officers (in this procedure this means officers on Chief Officer grades) or other officers where the proposed payment exceeds £50k.
- 2 This procedure does not apply where the payment is required to be considered by the council or one of its committees or sub-committees before it is agreed.
- 3 This procedure does not apply in full where the payment is agreed in the course of Employment Tribunal or other proceedings. In such cases section 9 and 10 will apply.
- 4 A termination payment is a payment which it is proposed will or may be made relating to the termination of an employees employment with the council.
- 5 In calculating the amount of a proposed payment, the following elements of the payment shall be taken into account, if they apply:
 - (a) Redundancy payment
 - (b) Any additional payment under the Local Government (Early Termination of Employment) Discretionary Compensation Regulations
 - (c) Payment in lieu of notice
- 6 A report in the form attached to this procedure shall be prepared by the manager of the employee to whom it is proposed the termination payment be made.
- 7 Payments proposed must be in accordance with council policy, in particular the council's Discretionary Compensation Policy.
- 8 The termination payment must be approved by the s151 Officer and the Monitoring Officer (or their duly authorised deputies) and a final decision concerning it made by the Chief Executive before any commitment to make the payment is made, whether in correspondence, discussion or in a compromise, settlement or other formal agreement.
- 9 In the case of a termination payment which is negotiated in the context of Employment Tribunal or other proceedings, where possible a report in the form attached will be completed prior to agreement as to the termination payment being reached.
- 10 Where this is not possible (for example, because the possibility of settlement arises unexpectedly and must be dealt with within a tight timeframe or it becomes apparent during the course of a hearing that the amount likely to be awarded by a tribunal is in excess of that anticipated prior to the hearing as possible in the event of an adverse finding) the officer with relevant delegated power giving instructions in the proceedings may, after taking legal advice, agree the termination payment.

**Appendix 2
Current Forms**
Ill health Retirement RER 2

Please use this form in conjunction with the Estimate Form - RER1 (Ill health)

Part 1 - To be completed by the Manager

Nature of Referral	Please tick
Tier 1~ The employee is permanently incapable of discharging efficiently the duties of their post because of ill health or infirmity of mind or body and there is <u>no</u> reasonable prospect of being capable of undertaking any gainful employment before normal retirement age.	
Tier 2 ~ The employee is permanently incapable of discharging efficiently the duties of their post because of ill health or infirmity of mind or body and is not capable of undertaking gainful employment within 3 years <i>but</i> is likely to be able to do so before normal retirement age.	
Tier 3 ~The employee is permanently incapable of discharging efficiently the duties of their post because of ill health or infirmity of mind or body <u>but is</u> likely to be capable of undertaking gainful employment within 3 years .	

Part 2 - To be completed by the Manager

Employee Details	
Name of Employee	
Service Area	
Pension Details and Payment	Annual Pension £ Lump Sum £

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Part 3 - To be completed by the Manager

Reason(s) for the Referral and Payment– Please give details

Name of Officer making the referral:

Date:

Part 4

Recommendations and Authorisation		Comments by designated officers (if any)
<p>I <i>agreed / do not agree</i> to the above payments and confirm the reason(s) for the payment as outlined above and that available</p>		
1	Name of Head of Service / Chief Officer	
	Date:	
2	<p>Corporate Director to authorise any post, up to but excluding Corporate Director level posts</p> <p><i>or</i></p> <p>The Chief Executive to authorise all posts at Corporate Director level</p> <p><i>or</i></p> <p>Audit Committee to authorise in the case of the Chief Executive</p>	
	Date:	
3	<p>Recommendation of the Authorised Finance Officer</p> <p>Name:</p>	
	Date:	

Completed forms IL1 and IL2 with all the relevant signatures should be scanned and emailed to: HR Express or sent to: HRExpress at Second Floor Town Hall London N1 2UD

For further details about completing this form email: HRExpress or telephone 0207 527 6070. For pension queries contact 0207 527 2028.

Discretionary Compensation Payment

Please refer to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

I agree that a discretionary payment should be made to:

Name of Employee:

Discretionary Payments (if applicable) – To meet audit requirements please give full details of why an award should be given and the number of weeks discretionary payment to be made.*

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Funding source / budget code	
Details of Pension Augmentation if applicable:	
Nomination by Head of Service / Chief Officer:	Nam
Date of nomination	
Authorisation by Corporate Director	Name

(or in the case of a Corporate Director by the Chief Executive):**	
Date of authorisation:	

1 Factors taken into account

The following factors will be taken into account when deciding whether to award a compensatory payment and, if a compensatory payment is made, the amount of that payment:

- Individual financial and other personal circumstances
- The Council's interests, including corporate and service imperatives
- The Council's fiduciary duty, including its duty to protect the interests of Council Tax payers and to exercise prudence and propriety
- Overall work record of the employee, including performance, attendance, length of service, level of responsibility and disciplinary record
- Any other factor relevant to the individual case

Redundancy and efficiency payments will be met from service department budgets.

2 Augmentation

The Council has a discretion to augment (i.e. increase) a member's pension by virtue of Regulation 12 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.

The augmentation provisions allow the Council to award a member an additional provision of membership at any time during active membership of the scheme.

The Council's general policy on augmentation is that no extra membership should be granted, subject to exceptional individual circumstances. However, as an exception to the general augmentation policy, the Council will use the augmentation provisions to give pension scheme members the option on a redundancy or efficiency dismissal of converting some or all of any discretionary compensation payment (less the statutory or contractual redundancy payment) into additional pensionable service up to a maximum of 10 years.

*For further details please contact your HR Business Partner.

** To be completed by the Chair of the Audit Committee in the case of the Chief Executive.

RER2

Authorisation for Release of Redundancy and/or Pension Payments
This form is to be used alongside the RER1 Form

PART 1 - To be completed by the Change Manager	
Nature of Referral	Please tick the relevant boxes
Business Efficiency/Redundancy	
Pensions Release (if over 55) - please specify type of release, e.g. voluntary request/redundancy/compassionate grounds, ex employee)	
<i>85 year rule switched off</i>	
<i>85 year rule switched on (explicit management instruction & authorisation required)</i>	
Please give details of referral	
Name Of Officer Making the referral	
Date	

N.B For ill health retirement please use the ill health RER forms

PART 2 - Employee Details		
Name		00/01/1900
Service Area		0
Last Day of Service		00/01/1900
Redundancy Payment		#REF!
PILON - where applicable, please give number of weeks		
Pensions Details and Payment - include capital cost of pension strain where applicable	Annual Pension	£0.00
	Pension Lump Sum	£0.00
	Capital Cost of Pension Strain	£0.00

PART 3 - To be Completed by Senior Management		
		Signature and Comments if any
I agree/do not agree to the above payments and confirm the reason(s) for the payment as outlined above and that funds are available		

Name of Head of Service/Chief Officer		
Date		
Second Signatory		
Date		
<p><i>Notes for Second Signatory - Corporate Director to authorise any post, up to BUT excluding Corporate Director Posts OR The Chief Executive to authorise all posts at Corporate Director level OR The Audit Committee to authorise in the case of the Chief Executive</i></p>		
Finance Signatory		
Date		
<p><i>Notes for finance Signatory -</i></p>		

Completed forms (RER1 and RER2) with all relevant signatures should be scanned and returned to the HR Officer or hr.express@islington.gov.uk OR sent in the internal post to HR Operations, 2nd Floor, Town Hall, Upper Street, London, N1 2UD

If you have any queries (not pensions queries), please contact your HR Officer of HR Operations on 020 7527 6070

For pensions related queries, please contact 020 7527 2028

Appendix 3: SEVERANCE PAY IN PARTS OF THE PUBLIC SECTOR

Severance Pay in the NHS

From 1 April 2015, new NHS redundancy arrangements came into effect in England.

Staff who are made redundant receive one month's pay per year of reckonable service, with a maximum of 24 months' pay. A month's pay is subject to a total annual earnings floor of £23,000 and cap of £80,000. The maximum that can be paid under these provisions is £160k

Severance Pay in the Civil Services

Compulsory redundancy:

The current scheme pays 1 month's pay for every year of service up to a maximum of:

- 12 months for those under scheme pension age
- 6 months for those over scheme pension age.

A month's pay is subject to a total annual earnings floor of £23,000 and cap of £149,820. The maximum that can be paid under these provisions is £149,820.

Voluntary redundancy:

As above but 1 month's pay for every year of service up to a maximum of:

- 21 months for those under scheme pension age
- 6 months for those over scheme pension age.

The maximum that can be paid under the scheme is £262,185

Comparison with Islington's Arrangements

Redundancy payments in both sectors are considerably more favorable to employees than the current arrangements in the council. Under the council's scheme, an employee made redundant over the age of 61yrs from the council's most highly paid post with the maximum years of reckonable service under the scheme would receive £92k.

The Local Government (Early Termination of Employment) Discretionary Compensation Regulations allow this to be topped up (subject to the criteria in the council's scheme) to 104 weeks' pay. This would total approximately £320k for the highest paid member of staff.

In the NHS and Civil Service sectors there is provision made for "Special Severance Payments" which can be paid outside an employee's statutory or contractual entitlement can be made upon termination of their employment contract. There does not appear to be a specific cap on the payment amount.