

Report of: **Assistant Chief Executive, Governance and HR**

Meeting of:	Date	Agenda item	Ward(s)
<b>Policy and Performance Scrutiny Committee</b>	8 <sup>th</sup> December 2014		

<b>Delete as appropriate</b>	Exempt	Non-exempt
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**Appendix 4 to this report is not for publication**

**Subject: Termination Payments**

## **1 Synopsis**

- 1.1** This paper provides an overview of the process for making termination payments to senior staff and includes an examination of payments made between April 2006 and March 2014.

## **2. Recommendations**

- 2.1** To note the contents of the report.

## **3 Background**

### **3.1 Scope of Review**

For the purpose of this review 'termination payments' will cover redundancy, payment in lieu of notice and any additional payment under the Local Government (Early Termination of Employment) Discretionary Compensation Regulations.

- 3.2** For the purpose of this review "senior staff" refers to officers on the council's Chief Officer grade or equivalent which starts at £68,475.

### **3.3 Entitlement to Termination Payments**

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.

### **3.4 Basis for calculating 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.

Entitlement to redundancy pay under the council's policy is based on contractual pay, length of continuous service and age. The maximum service that can be taken into account for redundancy pay purposes is 20 years. For full completed years of service the entitlement is:

- Under the age of 21 half a week's contractual pay,
- Between 22 and 40 one week's contractual pay, and
- From 41 onwards one and half weeks' contractual pay.

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). Current salary bands for Chief Officers are set out in Appendix 1.

An employee aged 55 or over who is made redundant and is a member of the Local Government Pension Scheme is entitled to early retirement. This would include an annual pension without actuarial reduction and a lump sum.

### **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. See Appendix 3 – *Pay Policy Statement* extract for details of the criteria to be applied.

## **4.0 Governance process**

### **4.1 Background**

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.

## **4.2 Thresholds and related governance**

### **4.2.1 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.

### **4.2.2 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 be prepared by the manager of the employee to whom it is proposed the termination payment be made. A standard template is available (See Appendix 2).

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.

### **4.2.3 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 contracts 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. An extract from the Statement covering termination payments is attached as Appendix 3.

## **5.0 Breakdown of Payments**

A detailed list of payments made between July 2007 (when the current payroll system was introduced) and March 2014 is set out in Exempt Appendix 4. A summary is set out below. We no longer have access to records prior to July 2007.

Between July 2007 and March 2014 a total of 30 termination related payments were made to senior managers at Islington Council. The total of all payments made was £2,490,249. The average payment was £83,008.

Table 1

	July 2007 to March 2010	April 2010 to March 2014
No of payments	17	13
Total amount	£1,626,748	£863,501
Average payment	£95,691	£66,423
% of Leavers via redundancy	53%	69%

The majority of termination payments processed since April 2010 have been redundancy related.

## 6.0 Recovery of Public Sector Exit Payments

The government is currently consulting on proposal to require high earning public sector employees or office holders to repay certain exit payments. It is anticipated that powers to enable this will be included in the Small Business Enterprise and Employment Bill with secondary legislation to give effect to the provisions expected by April 2016.

## 7.0 Implications

### **Financial implications:**

None arising directly from this report.

### **Legal Implications:**

The Localism Act 2011 requires local authorities to publish an annual “pay policy statement”, approved by full Council, having regard to guidance to be published by the Secretary of State. Authorities are then be constrained by their policy statement when making determinations on senior officer pay (although the statement may be amended at any time by a further resolution of the full council).

The circumstances of a person’s departure from an organisation are their personal data under the Data Protection Act 1998.

Other legal implications are included within the report.

### **Environmental Implications:**

None

### **Resident Impact Assessment:**

None arising directly from this report.

## 8.0 Conclusion

There are strong governance procedures in place to ensure termination payments are transparent and in line with an individual's contractual entitlements and that discretionary payments are made appropriately.

Final report clearance:

**Signed by:**

**Received by:** Assistant Chief Executive, Governance and HR      Date

Head of Democratic Services      Date

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## Appendix 1

<b>Grade</b>	<b>Scale</b>	<b>Salary</b>
C01+	<b><i>T (5)</i></b>	£139,407
C01+	<b>4</b>	£136,944
C01+	<b>3</b>	£134,520
C01+	<b>2</b>	£132,093
C01+	<b>1</b>	£129,675
C01	<b><i>T10</i></b>	£129,741
C01	<b>9</b>	£127,323
C01	<b>8</b>	£124,824
C01	<b>7</b>	£122,403
C01	<b>6</b>	£119,980
C01	<b>5</b>	£117,552
C01	<b>4</b>	£115,134
C01	<b>3</b>	£112,710
C01	<b>2</b>	£110,280
C01	<b>1</b>	£107,862
C02	<b><i>T (7)</i></b>	£110,451
C02	<b>6</b>	£107,970
C02	<b>5</b>	£105,435
C02	<b>4</b>	£103,011
C02	<b>3</b>	£100,593
C02	<b>2</b>	£98,166
C02	<b>1</b>	£95,742
C03	<b><i>T (7)</i></b>	£95,322
C03	<b>6</b>	£92,817
C03	<b>5</b>	£90,288
C03	<b>4</b>	£87,867
C03	<b>3</b>	£85,437
C03	<b>2</b>	£83,016
C03	<b>1</b>	£80,595
C04	<b><i>T (7)</i></b>	£83,331
C04	<b>6</b>	£80,748
C04	<b>5</b>	£78,168
C04	<b>4</b>	£75,744
C04	<b>3</b>	£73,320
C04	<b>2</b>	£70,896
C04	<b>1</b>	£68,475

## Appendix 2

### 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 3

### Pay Policy Statement Extract

#### 9 Leaving the council

Employees who voluntarily leave the council are not entitled to a termination payment. Those who volunteer for redundancy under the council's voluntary redundancy scheme receive a payment of £500 in addition to any other entitlements they may have

Employees who are made redundant are entitled to a redundancy payment based on the statutory redundancy scheme with regards the calculation of the number of week's redundancy pay but, as sanctioned in the Local Government (Early Termination of Employment) Discretionary Compensation Regulations, actual salary is used rather than the statutory maximum of £450 per week.

In exceptional circumstances the Council may exercise its powers under the above mentioned Regulations and award a discretionary payment to senior staff in line with the council's discretionary termination compensation policy, for those whose employment is terminated by reason of redundancy or in the interests of the efficiency of the service, including early retirement.

The following factors will be taken into account when deciding whether to award a compensatory payment under these Regulations 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.

Where a Chief Officer's contract is terminated in the interests of the efficient exercise of the Authority's functions they are contractually entitled to six months' notice or may be paid in lieu of notice where their contract provides for this.

The Audit Committee (or its Personnel Sub-Committee) may hear representations in respect of the termination of a Corporate Director's employment in accordance with the JNC terms and conditions of employment.

In the case of the Chief Executive, the Audit Committee (or its Personnel Sub-Committee) will approve the early retirement of the postholder and agree the award of any discretionary payments in connection with such retirement or redundancy in line with the policy outlined above. No such payments were made in the financial year 2013-14.

The Audit Committee (or its Personnel Sub-Committee) will also approve any payment in line with the policy outlined above to any other officer which exceeds £100,000. No such payments were made in the financial year 2013-14. This ensures that elected councillors are accountable for payments made in these circumstances without delay to finalising arrangements.

