



Report of: Assistant Chief Executive, Governance and HR

Meeting of:	Date	Agenda item	Ward(s)
Policy and Performance Scrutiny Committee	11 May 2015		

Delete as appropriate	Exempt	Non-exempt
-----------------------	--------	------------

**Subject: Termination Payments**

## 1 Synopsis

- 1.1 This paper provides further information on termination payments requested by the Committee at its meeting of 8 December 2014.

## 2. Recommendations

- 2.1 To note the contents of the report.
- 2.2 To consider whether the governance arrangements now in place are sufficiently robust or should be reviewed by the Audit Committee.

## 3 Background

At its meeting on 8 December 2014 the Committee asked for some further information in respect of termination payments. Paragraph 4 below contains the information specifically requested. Paragraph 5 provides clarification concerning recovery of termination payments. Some members of the committee also indicated that a further discussion of the current processes governing future termination payments would be welcome. The current procedure is contained in Appendix 1.

#### 4 Request: Additional information on comparison between compensation payments made to Chief Officers and more junior staff

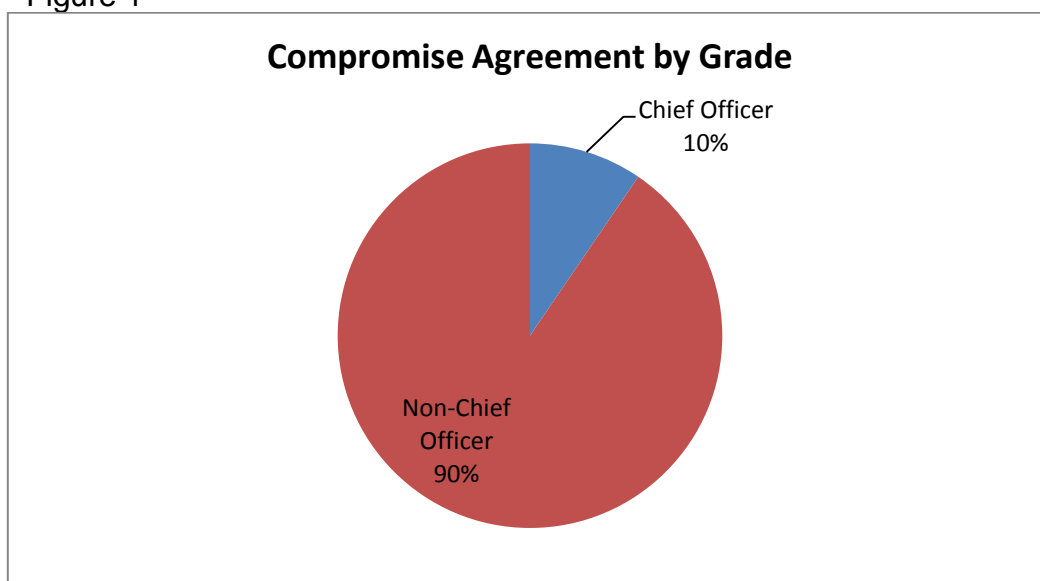
4.1 Compromise agreements (technically known as “settlement agreements” since 29 July 2013) are legally binding contracts used by employers to record termination arrangements with departing employees on terms acceptable to both. Signing a compromise agreement is voluntary, although their use is encouraged by the Employment Tribunal service to avoid or settle claims. Aside from providing for any payments that are to be made in respect of the termination, the main feature of a compromise agreement is that the individual waives their right to make a claim in the employment tribunal or court in respect of the termination of their employment or issues that may have arisen during it. They may be used to settle an employment tribunal claim before it reaches the stage of a hearing.

4.3 Compromise agreements will generally also include a confidentiality clause and are likely to include an agreed reference. Confidentiality clauses do not affect the rights of employees under the Public Interest Disclosure Act 1998. Provision may also be made for outplacement support for the departing employee. In all cases employees are required to have the benefit of legal advice before signing such an agreement and provision is made for reimbursing the costs incurred.

#### 4.4 Comparison of Compromise Agreements by Grade:

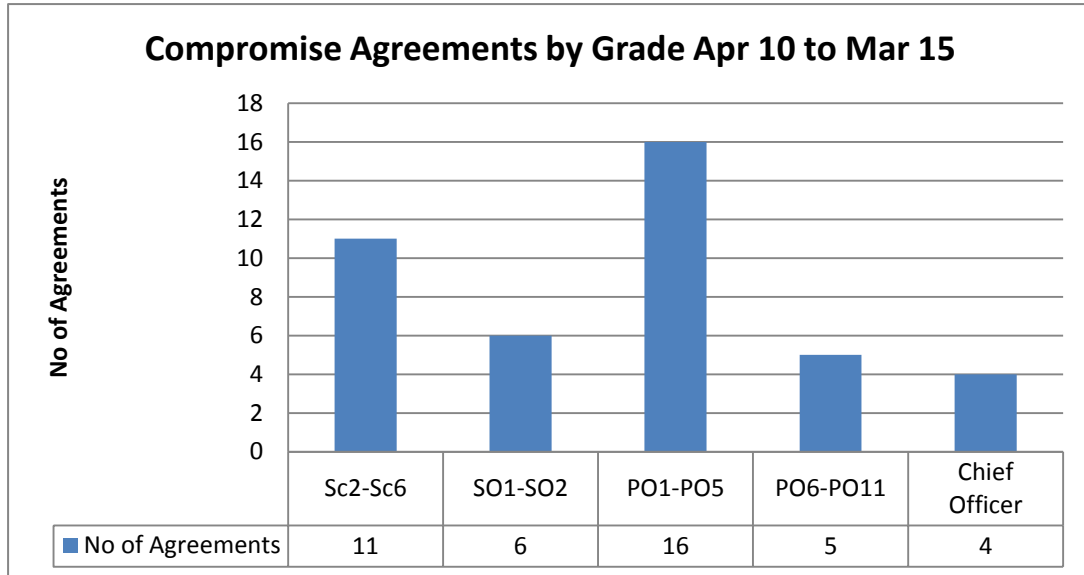
The Council used 42 termination related compromise agreements between April 2010 and March 2015, 4 related to Chief Officers while the remaining 38 were for staff on grades below Chief Officer. The numbers are quite small at all grades and particularly at Chief Officer level and therefore sensitive to small changes.

Figure 1



A further breakdown of compromise agreements by grade is contained in Figure 2 below.

Figure 2



The largest number of compromise agreements were used for staff graded PO1-PO5 (£32,964 to £44,544) followed by Scale 2 to Scale 6 (£17,977 to £27,879) with 16 and 11 agreements respectively. The lowest number were used for Chief Officers (£68,475 to £129,741) where a total of four were used during the period in question.

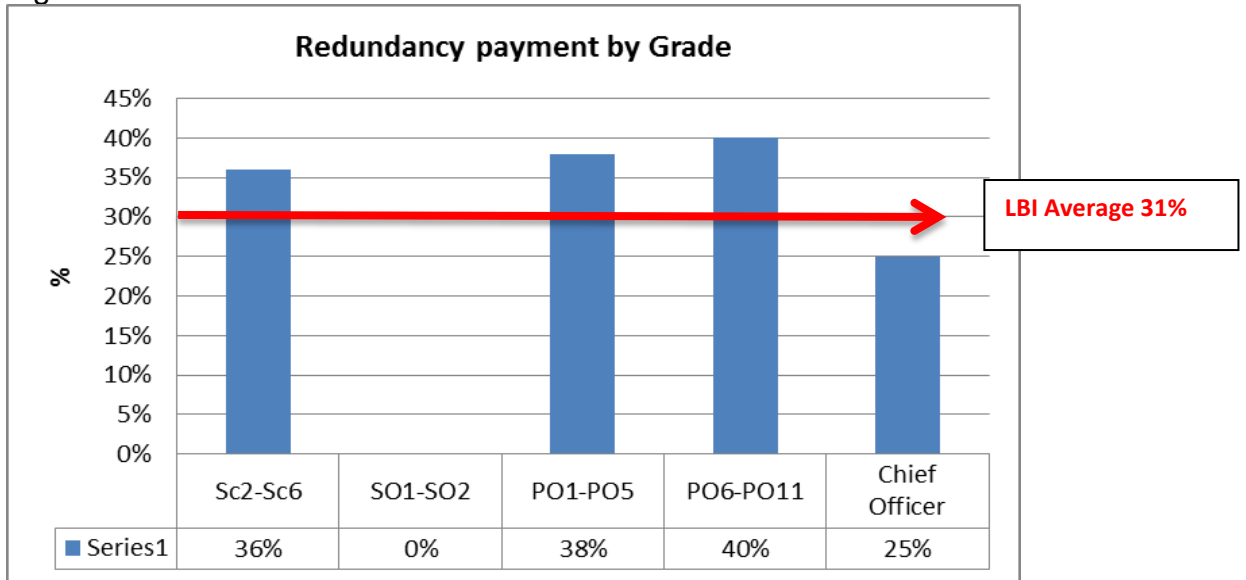
#### 4.5 Analysis of types of payment by Grade

In this section we have compared the types of payments made to employees who departed the council via a compromise agreement between April 2010 and March 2015 based on their grade banding.

##### **Redundancy:**

A redundancy payment was made to 13 of the 36 (31%) employees. The highest proportion was paid to employees in the PO6-PO11 category and the lowest to those in the SO1 to SO2 category. The Chief Officers and SO1 to SO2 categories were below the 33% average.

Figure 3



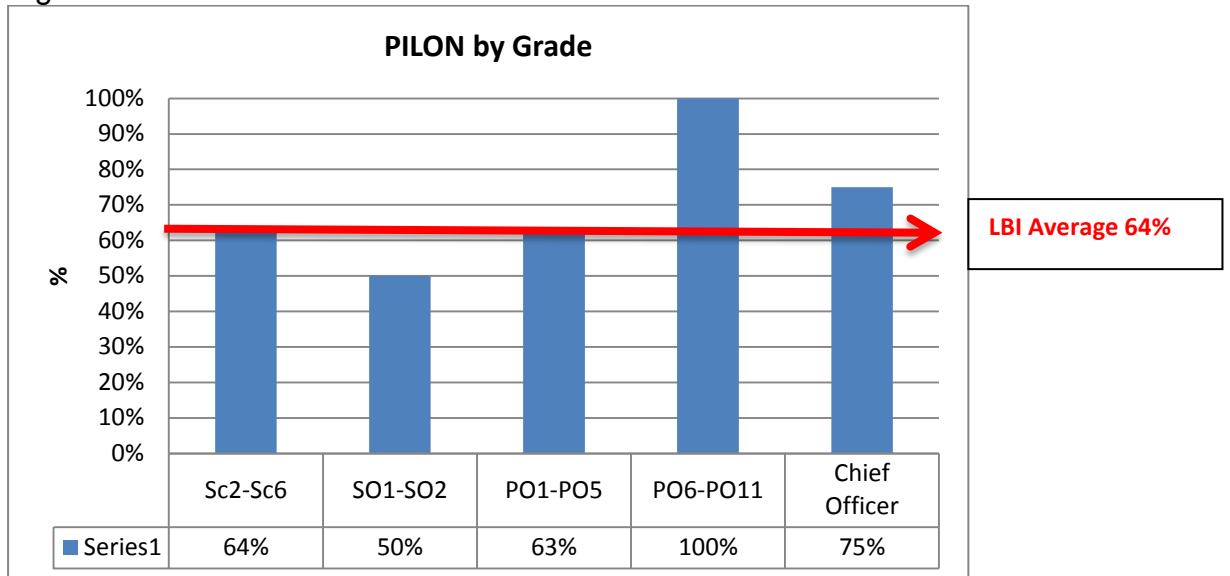
To provide some context for this the table below indicates the redundancies by grade over this period.

Grade	% of Emp	No of Emp	Redundancies	Red as % of Headcount
CO	1.21%	52	14	26.9%
PO6-PO10	8.96%	394	85	21.6%
PO1-PO5	30.51%	1341	213	15.9%
SO1-SO2	18.04%	793	121	15.3%
Sc1-Sc6	41.18%	1810	135	7.5%

## PILON:

27 of the 42 (64%) employees were paid in lieu of notice. The highest proportion paid PILON were employees in the PO6-PO11 category and the lowest those in the SO1 to SO2 category.

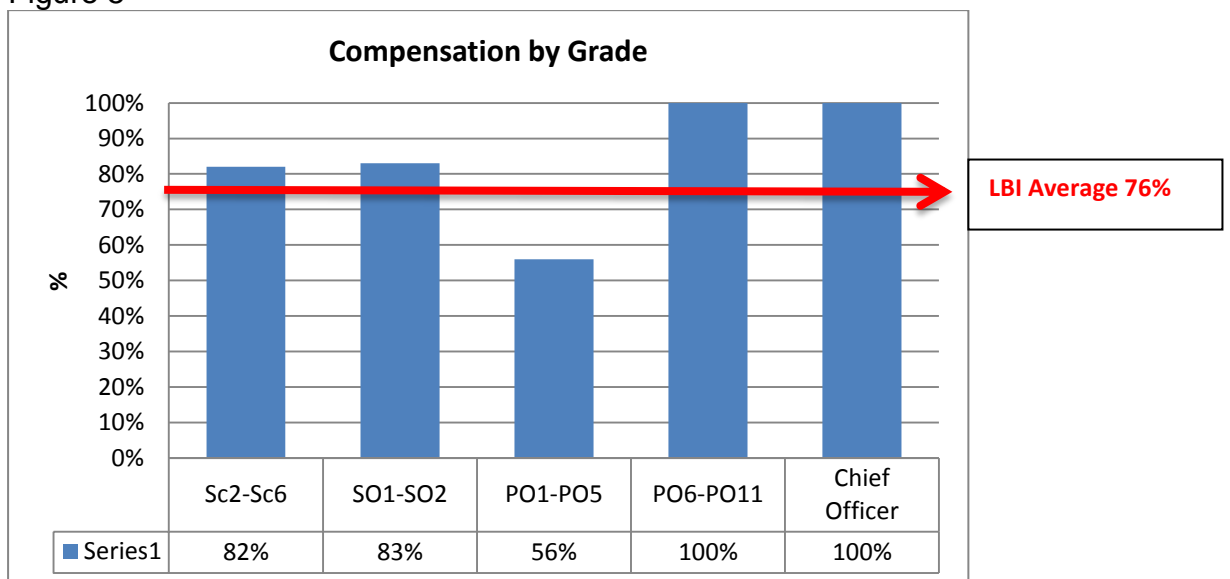
Figure 4



## Compensation:

A compensation payment was made in 32 of 42 employees (76%). They were paid in all cases at PO6 to PO11 and Chief Officers. Only 56% of staff in the PO1 to PO5 category received “compensation”, this is likely to be linked to the above average number of redundancy payments received by employees in this grade band.

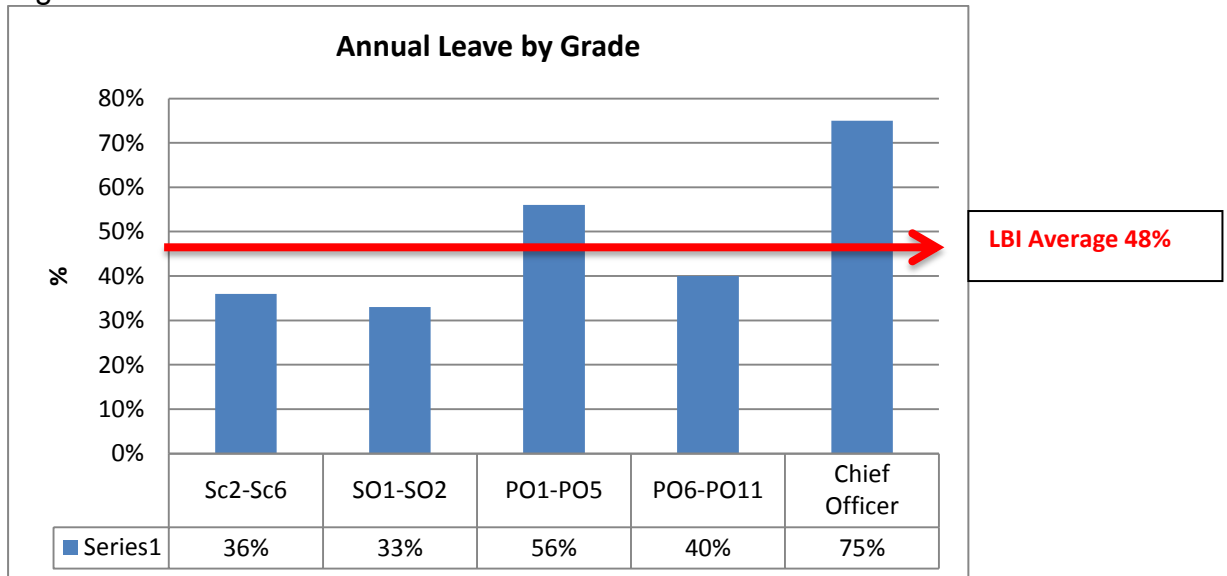
Figure 5



## Annual Leave:

20 of the 42 employees (48%) were paid for annual leave not taken. The highest proportion was to Chief Officers and the lowest to staff on SO1 to SO2.

Figure 6



### 4.6 Request: More detail to be provided on specific payments and particularly why some payments have been made that are significantly higher than others

Detail on a selection of payments which attracted the most discussion at the previous Policy and Performance Scrutiny Committee which considered this topic will be available at the meeting.

### 4.7 To ascertain whether similar payments have been made to highly paid Education staff, such as Headteachers

The table below sets a summary of compromise agreements with Head teachers and Deputy/Assistant Heads in the four years since 2010-11. In the case of community, voluntary controlled, community special and maintained nursery schools the governing body notifies the local authority if it determines that any person employed by the authority as Headteacher of Deputy/Assistant Head at the school should cease to work there and the local authority has 14 days from the notification to implement it. In foundation, voluntary aided or foundation special schools it is a matter for the governing body.

Year	Number	Redundancy?	Redundancy payments	Compensation payments
2010-11	5	1	24,793	144,728
2011-12	1	0	0	10,000
2012-13	5	1	37,204	106,122
2013 -14	6	0	0	199,571

#### 4.8 Consideration to be given as to whether compensation payments to Chief Officers should be in line with those paid to more junior members of staff

The council's policy in respect of **discretionary compensation** adopted by the Audit Committee applies to all staff. The amounts of compensation will differ based on the application of the criteria in the policy to the individual circumstances. The individual's salary will often be a relevant factor. The criteria in the policy are:

- 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.

#### 4.9 The position in respect of other specific elements that may be included in a termination payment is as follows:

- (i) The criteria used to calculate **redundancy** payments are the same for all staff. Actual payments differ based on length of employment, age and weekly salary.
- (ii) **PILON** (where paid) is based on the individual employees contractual notice period or, where longer, the applicable statutory notice period. Contractual notice periods tend to be longer for more senior staff in order that the council (if it chooses to require the individual to work their notice) has longer to put in place new or transitional arrangements. The 6 month period of notice in respect of termination for efficiency is only contained in Chief Officer contracts. There is no provision for termination on the basis of efficiency in the contracts of other employees.
- (iii) There is no statutory definition of "**efficiency**" and no express limitation of it. It clearly covers situation of reorganisation not amounting to redundancy, but also covers the termination of an employee's employment on the basis that they are no longer personally suitable for the role.
- (iv) The **annual leave** to which individual employees are entitled differs by reference to factors such as length of continuous service and grade. Currently staff are encouraged to take their holiday during their notice period. They may be unable to do this for a number of reasons. They may for example be absent on sick leave, they may be paid in lieu or their service may need them to come into work every day of their notice period in order to complete a project. The decision in an individual case will therefore take into account the overall circumstances.

#### **4.10 Whether compromise agreements are applied across all grades and whether such level of payment should be more equitable across all grades**

The analysis of compensation payments above demonstrates that compromise agreements may be used in respect of employees at all grade. The level of payment is affected by the factors discussed above.

### **5. Recovering termination payments**

Under the Employment Rights Act 1996 (ERA), an employee can count service with an 'associated employer' towards the service requirement for a redundancy payment (i.e. two years) and, if appropriate, for calculating that payment. Local authorities are not associated employers under the definition in the Act. However, the effect of the Order is to make local authorities associated employers for the purposes of the redundancy provisions of the ERA.

If an employee who is under notice of redundancy receives an offer of a job from another Modification Order body before the termination of his or her employment and takes it up within 4 weeks of the end of the old employment, there will be no dismissal for redundancy payment purposes.

### **6. Recent Guidance**

- 6.1 The DCLG issued non-statutory guidance for Local Authorities on use of severance agreements and 'off payroll' arrangements in March. The guidance given is (in summary) that:

It is not appropriate to seek to enter into a compromise agreement:

- To cover up examples of individual or organisational failure
- To avoid taking appropriate performance or disciplinary action.
- To terminate a contract of an individual who has made a protected disclosure under the Employment Rights Act 1998 (whistle-blowing) or to prevent them speaking out about wrong-doing in authorities. (PIDA in any event prevents confidentiality clause having this effect).

- 6.2 Local authorities should also seek to be more transparent about the extent to which they enter into severance agreements and should consider reporting on their use in their statement of accounts. It appears that Ministers may be minded to require authorities to do so in the future. Under the Accounts and Audit (England) Regulations 2011 the council is already required to show in its accounts the total amount of any compensation for loss of employment paid in connection with the termination of their employment to a senior employee as defined in the Regulations. This covers the Chief Executive and any senior officers reporting directly to her.



## 7 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 Conclusion

There are now 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:**

Assistant Chief Executive, Governance and HR      Date

### **Received by:**

Head of Democratic Services      Date

**Report Author:** Debra Norman, Assistant Chief Executive, Governance and HR

Tel: 020 527 6096

## 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.

**Report of: [INSERT JOB TITLE OF MANAGER PROPOSING TERMINATION PAYMENT]**

**SUBJECT: Termination Payment – [INSERT NAME OF EMPLOYEE]**

<b>1</b>	<b>Recommendations</b>
	<p><b>(Delete as applicable)</b> That the Chief Executive agree that a termination payment of [ £ ] be made to NSERT NAME OF EMPLOYEE].</p> <p><b>OR</b></p> <p>That the Chief Executive agree that a compromise/settlement agreement containing the following provisions as to payment be entered into between the council and [INSERT NAME OF EMPLOYEE].</p> <p><b>OR</b></p> <p>That the Chief Executive agree that [INSERT OFFICER'S JOB TITLE] may agree a termination payment of up to [£ ] in respect of [SPECIFY PROCEEDINGS]</p>
<b>2.</b>	<b>Background</b>
2.1	[INSERT THE DETAILS OF THE EMPLOYEE].
2.2	[SET OUT THE REASONS FOR THE EMPLOYEE'S EMPLOYMENT BEING TERMINATED]
2.3	[SET OUT THE CALCULATION OF THE PROPOSED TERMINATION PAYMENT]
2.4	[SET OUT THE REASONS FOR THE ELEMENTS AND AMOUNT OF THE PROPOSED TERMINATION PAYMENT – including application of the Discretionary Compensation policy]
2.5	[SET OUT THE DETAILS OF ANY CURRENT EMPLOYMENT TRIBUNAL OR OTHER PROCEEDINGS].
<b>3</b>	<b>Implications</b>
	<p><b>Financial Implications:</b> [TO BE COMPLETED BY FINANCE].</p> <p><b>Legal Implications:</b> [TO BE COMPLETED BY LEGAL SERVICES].</p> <p><b>Equalities implications:</b> [COMPLETE AS APPLICABLE]</p>

Section 151 Officer and Monitoring Officer or authorised deputy to indicate their approval of the recommendations and the Chief Executive to indicate her/his decision by:

- signing and dating this report and returning it the Head of HR OR
- emailing the Head of HR attaching a copy of the report and confirming their approval of its recommendation.