

# DRAFT

Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

## PERSONNEL COMMITTEE

### MINUTES OF THE MEETING HELD ON TUESDAY, 20 SEPTEMBER 2011

**Councillors Present:** Adrian Edwards, Tony Linden, Mollie Lock (Vice-Chairman), Andrew Rowles and Quentin Webb (Chairman)

**Also Present:** Robert O' Reilly (Head of HR), Moira Fraser (Democratic Services Manager)

**Apologies for inability to attend the meeting:** None

**Councillor(s) Absent:** None

#### PART I

#### 8. Minutes

The Minutes of the meeting held on 03 June 2011 were approved as a true and correct record and signed by the Chairman.

#### 9. Declarations of Interest

Councillors Quentin Webb, Tony Linden and Andrew Rowles declared an interest in Agenda Item 4, but reported that, as their interest was personal and not prejudicial, they determined to remain to take part in the debate and vote on the matter.

Councillor Webb also confirmed that when this item had been discussed at previous Management Board meetings the members of the Personnel Committee that were present had left the meeting and had not taken part in any of the discussions.

#### 10. The Redundancy Multiplier used under the Discretionary Compensation Regulations (DCR) 2006

*(Councillors Webb, Linden and Rowles declared a personal interest in Agenda item 4 by virtue of the fact that they were members of the Local Government Pension Scheme. However as they could not be made redundant as described in this policy their interest was personal and not prejudicial. They were therefore permitted to take part in the debate and vote on the matter).*

The Committee considered a report (Agenda Item 4) concerning a proposed reduction in the multiplier used to calculate redundancy payments in light of lessons learnt from the reduction in the staffing establishment during 2010/11.

Robert O' Reilly explained to those present what the redundancy multiplier was and also the reasons as to why it had been set at a factor of three when previously discussed by the Personnel Committee in March 2007. Mr O'Reilly noted that in considering lessons learnt from the redundancy exercise in 2010/11 the multiplier had emerged as an issue of concern due to the high cost of the exercise.

Members had therefore asked HR to undertake a survey of other local authorities to establish the level of multiplier they applied to redundancy payments. A survey had also been undertaken by the Local Government Employers. The information collected suggested that the average multiplier applied was 1.86 and Members had therefore asked Officers to revise the existing policy regarding the multiplier.

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Five options for the future use of the redundancy multiplier were therefore put forward namely:

- Option A – reduce the multiplier to one for all employees
- Option B – reduce the multiplier to one and a half for all employees
- Option C – to reduce the multiplier to two for all employees
- Option D – to retain the multiplier of three for all employees
- Option E – to reduce the multiplier to two for all employees aged under 55 at the age of dismissal by reason of redundancy and to reduce the multiplier to one and a half for employees aged 55 and over at the date of dismissal for redundancy.

Mr O' Reilly explained that Option E had been put forward as the recommended option on the basis that employees aged 55 and over at the date of dismissal for redundancy would receive their pensions prematurely (if they were in the Local Government Pension Scheme) and the costs of early payment of accrued pension rights would have to be met by the employer. Legal opinion sought by the Council suggested that the differential multiplier at age 55 would not be contrary to age discrimination laws but legal challenge could not be ruled out.

In accordance with paragraph 7.6.2 (Motions which may be moved without notice) and 7.12.4 (Speaking) Members voted to suspend standing orders in order to allow Rosemary Culmer, Michelle Gordon and Ian Haggett to address the committee.

Prior to Rosemary Culmer presenting the views of Unison she read a statement from the ATL (Association of Teachers and Lecturers). The ATL was opposed to the proposal in relation to the Redundancy Multiplier. Their view was that the Council had not sought sufficient legal advice and if the proposal was to proceed it could leave the Council vulnerable to age discrimination challenge. ATL recommended that the Council seek legal advice from more than one source in order to clarify the situation. Their preferred option was C as this would still save the Council money while avoiding any age discrimination issues which could potentially render the Council liable for additional legal fees.

Rosemary Culmer (Staffside Co-ordinator/UNISON Branch Secretary) and Ian Haggett (Unison's Branch Pensions Champion) noted that they had been given the opportunity to address Management Board at the meeting on the 08 September 2011. Following that meeting the recommended multiplier for employees aged 55 and over at the date of dismissal for redundancy had been increased from one to one and a half. Unison was however of the opinion that their original comments were still valid.

The Union's primary objections were:

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that the sampling used to establish the average multiplier was inadequate;

the Equalities Impact Assessment attached to the report was inadequate and potentially unlawful;

the Council had failed to provide the Unions with consistent staff data for them to enable a proper analysis of the effects of the proposal by gender and age. The staff side were also concerned about the unacceptable delay in receiving the information;

there was an inaccurate assumption in the report that there was always a 'strain on fund' cost;

Unison's initial legal advice suggested that, in terms of the equalities issues, there was gross over simplification of the situation and therefore the likelihood of legal challenge under equalities legislation should not be dismissed;

the differential multiplier proposed negated the intentions of Parliament to provide a higher rate of compensation for older staff;

the assertion that there was always a large jump in exit costs for employees aged 55 and over was wrong as this included an assumption that all those in this age bracket had access to a pension;

the proposal was not comparable with neighbouring authorities with whom the Council would be competing for staff;

the staff side had been given inadequate time to consult with staff and to seek legal advice.

The Unions recognised the financial difficulties faced by the Council and had always worked with the Council to assist with organisational change. They felt that this proposal was however not acceptable. The Unions had had little time available to them to consult staff on the report but had had a good response which demonstrated how important this issue was to staff. Staff had been consulted via email due to the time constraints which meant that many employees in the care homes, day centres and schools for example could not be contacted for their opinion.

Of the responses submitted (140 responses from both union and non-union members in three days) there was no support for Options A and B, only 1% of respondents were in favour of Option E and 2% were in favour of an additional option of a multiplier of 2.5. Mrs Culmer explained that although 63% of respondents were in favour of Option D, 50% of these respondents would accept Option C and 34% of respondents were in favour of Option C. In other words 84% of the respondents would find Option C (reduce the multiplier to two for all employees) acceptable as it did not include an age related differential.

Mrs Culmer noted that Corporate Board had recommended Option C to Members and they would not have done so if it was not affordable. Using the examples cited in the report the additional costs of adopting Option C would be relatively small and would cost the Council less than a single legal challenge.

Robert O' Reilly explained that Management Board had considered the option of reducing the multiplier for those employees aged 55 and over at the date of dismissal for

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redundancy from three to one but had concluded that this was too severe and had therefore proposed recommending a multiplier of one and a half to the Personnel Committee.

The staff side felt that there were important moral and ethical issues raised by the proposed change and they believed that it was essential that high ethical and moral standards were maintained by public sector organisations.

Unison asked the Personnel Committee to:

give serious consideration to the views of staff;

give proper consideration to the moral and ethical issues raised;

note the strength of feeling of the Union members and the potential for this proposal to lower the already lowered state of staff moral at the council;

give consideration to the expensive and damaging effect of a legal challenge for the sake of what was likely to be a small saving.

Michelle Gordon (GMB Organiser) in addressing the Committee noted that GMB supported all the comments made by Mrs Culmer and Mr Haggett. Like Unison they felt that the proposals disadvantaged older members of staff and low paid workers. Ms Gordon reported that unemployment was high which would exacerbate the predicament for older staff seeking re-employment. The receipt of their pension would also impact negatively on the level of benefits they were entitled to. Councillor Adrian Edwards disputed that unemployment was high in West Berkshire.

Ms Gordon also stated that the proposal might also impact negatively on staff retention. There would be less of an incentive to keep employees aged 55 and over on and there would be a compensatory loss in experience and knowledge when these employees were made redundant

Ms Gordon noted GMB's issues with the proposal were primarily centred around the potential differential based on age and the impact that this would have on those employees that were not members of the Local Government Pension Scheme (LGPS).

Approval of Option E might raise issues around gender discrimination as a large percentage of the Council's female employees had opted out of the LGPS. In addition this group of employees often had less contributory years as they might have taken time off work to raise their families. The unions had not been supplied with the data on contributory years that they had requested as yet. However the initial legal advice sought by the unions indicated that the proposal might well be deemed to be discriminatory on both age and gender grounds.

In response to a query from Members the Head of HR confirmed that 25% of the Council's workforce was aged 55 and over and of those around half (92) were not in the LGPS. He noted that 77% of the 92 were female and that this information needed to be considered in the light of the fact that 75% of the Council's workforce was female. The Unions noted that from the information provided by the Council they had ascertained that 73 employees aged over 55 were not in the LGPS and that 84% of those employees were female. There was therefore some uncertainty about the accuracy of the information supplied.

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Members noted that employees had the choice as to whether or not they would like to join the LGPS and it was therefore their choice if they opted out. Rosemary Culmer explained that in many cases employees opted out of the LGPS because they could not afford the payments and these employees would therefore be penalised twice. Michelle Gordon explained that advice from the union's solicitors indicated that in light of this the policy might well be deemed to be a contravention of the Council's Equality Duty.

The unions' solicitors had advised that the policy as proposed could be deemed to be discriminatory in that it disproportionately affected women who were often lower paid and therefore were forced to opt out of the LGPS and who often had lower numbers of contributory years in the LGPS as they took time off to raise families.

Robert O' Reilly noted that those employees that opted out received a higher net pay (the equivalent of £1k per annum for those on a salary of £25k). The issue of the effect on those employees that had opted out of the LGPS and were aged 55 and over formed the crux of the legal dilemma. He noted that a challenge to the policy could only be brought in the event that an actual case arose and the policy could not be challenged in the abstract. Michelle Gordon reminded Members that where employees opted out of the LGPS there was a benefit to the Council in that they were then not liable for the employer contributions.

The Head of HR drew Members' attention to the Council's legal advice as set out in the report. He noted that the Monitoring Officer had stated that if Option E was adopted there might be a risk of legal challenge but the Monitoring Officer was of the opinion that the Council's position was defensible.

In relation to schools Robert O' Reilly explained that the policy would only be applicable to Local Education Authority maintained schools. The Council could recommend the policy to aided and foundation schools and academies but they would not have to follow them. Individual school's governing bodies also had the authority to increase severance payments up 104 weeks pay should they wish to do so but they would have to fund the increase themselves.

Councillor Mollie Lock felt that, given the budget situation faced by many schools, they were unlikely to make up the budget as suggested.

Members thanked the Trade Unions for their contribution to the meeting and the Trade Union representatives thanked members for the opportunity to allow them to address the Committee. The unions reiterated their wish to work constructively with the Council as they had done in the past.

*Standing orders were resumed.*

Councillor Adrian Edwards queried the difference in cost to the Council should Option C be pursued instead of Option E. Robert O' Reilly explained that this was difficult to quantify as the number of future redundancies were not known and consequently Officers would not know how many of the employees would be aged over and under 55 years of age. He explained that the maximum difference would amount to 15 weeks per individual.

The Head of HR explained that he had discussed the issue of legal challenge with the Monitoring Officer that morning and he was still of the opinion that the proposal was lawful although there was a risk of legal challenge.

Councillor Tony Linden stated that this was a difficult decision. The Council's economic situation had to be taken into consideration hence the proposal to adopt Option E.

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However he was concerned about legal challenge and the potential costs that could be incurred should the proposal be implemented.

Councillor Quentin Webb stressed the need to arrive at a conclusion that was seen as equitable to both the employer and employees. Councillor Adrian Edwards said that the policy needed to be fair. He noted that an employee who was aged 55 years and 1 day and an employee who was 54 and 364 days would receive different payouts even if they had the worked at the Council for the same number of years. The fact that they might or might not be in receipt of a pension from the LGPS was immaterial in his opinion. He therefore supported Option C. In Councillor Edwards' opinion Option E did not feel fair. Councillor Mollie Lock supported Councillor Edwards' comments and added that she could not see the merit in offering a multiplier of one and a half when the average applied by other local authorities was 1.86. Councillor Andrew Rowles felt that the application of a differential could create a two tier situation in the Council which he would not wish to see created. Councillor Tony Linden was concerned that Option E might act as a disincentive for employees to join the pension scheme which was in his opinion a retrograde step.

The Personnel Committee therefore concluded that Option C should be adopted.

**RESOLVED that:**

1. Option C be adopted i.e. in future employees who were made redundant would have a multiplier of two applied to the statutory rate (using actual weekly pay).
2. Employees who were aged 55 or over would be entitled to an immediate unreduced pension if they were members of the Local Government Pension Scheme.
3. employees who were in the Local Government Pension Scheme be permitted to ask the Council to purchase for them additional pension to the actuarial value of the 'extra' redundancy compensation (in excess of the statutory amount due) instead of paying it to them as a lump sum.
4. the above revised policy be implemented with effect from 20th October 2011.

**11. Date of Next Meeting**

The Committee agreed to hold the next meeting on 24 October 2011 at 10.00am.

*(The meeting commenced at 10.00 am and closed at 11.10 am)*

**CHAIRMAN** .....

**Date of Signature** .....