

Title of Report:	The redundancy multiplier used under the Discretionary Compensation Regulations (DCR) 2006
Report to be considered by:	Personnel
Date of Meeting:	20 th September 2011
Forward Plan Ref:	EX2347

Purpose of Report: To propose a reduction in the multiplier used to calculate redundancy payments in light of lessons learnt from the reduction in the staffing establishment during 2010/11

Recommended Action: Personnel Committee to approve the reduction in the multiplier from a factor of three to two for staff aged under 55 and from a factor of three to 1.5 for staff aged 55 or over.

Reason for decision to be taken: To balance the benefits for employees of retaining a redundancy multiplier against the need to protect the public purse.

Other options considered: Set out in report

Key background documentation: Executive reports on 6th July 2010, 22nd July 2010, 8th November 2010 and 13th January 2011. WBC Employer Statement of Policy on Discretionary Compensation Regulations (on Council website) - 'the severance policy'.

The proposals will also help achieve the following Council Plan Themes:	
<input checked="" type="checkbox"/>	CPT13 - Value for Money
<input checked="" type="checkbox"/>	CPT14 - Effective People
The proposals contained in this report will help to achieve the above Council Plan Priorities and Themes by: achieving value for money	

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Date Portfolio Member agreed report:	05 August 2011

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Implications

- Policy:** The report proposes a change the Council's severance policy . The policy change would be made by the Personnel Committee.
- Financial:** A lower redundancy multiplier will save the Council money in future. Examples of the reductions in the cost to the Council are shown at Appendix B. .
- Personnel:** Staff under aged under 55 will still have a multiplier that is more generous than the local authority average (in the survey shown at Appendix A) of 1.86. Staff aged 55 or over may be unhappy with a multiplier of 1.5.
- Legal/Procurement:** The Council must publish a policy on the use of the discretions available to it under the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006. If the policy is changed as a result of this report employees must be given one month's notice of the introduction of the new policy.
The legal advice concerning the use of a multiplier which reduces at age 55 is explained in the report.
- Property:** none
- Risk Management:** not applicable
- Equalities Impact Assessment:** EIA completed and updated and shown at Appending C.

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		<input type="checkbox"/>
Delays in implementation could have serious financial implications for the Council		<input checked="" type="checkbox"/>
Delays in implementation could compromise the Council's position		<input type="checkbox"/>
Considered or reviewed by Overview and Scrutiny Commission or associated Task Groups within preceding six months		<input type="checkbox"/>
Item is Urgent Key Decision		<input type="checkbox"/>

Executive Summary

1. Introduction

- 1.1 This report arises from a review of the reduction in the staffing establishment which took place between 1st October 2010 and 31st March 2011. The reductions in the staffing establishment were agreed by the Executive in four separate reports (two in July 2010, one in November 2010 and one in January 2011).
- 1.2 Most post deletions were completed by 31st March 2011 or sooner. The reduction in the staffing establishment in Adult Social Care was implemented in a phased approach up to July 2011.
- 1.3 The lessons learnt from this exercise included a need to review the cost and affordability of severance payments. The financial position of the Council means that a balance needs to be made between the interests of the Council Tax payers and affordability and the interests of Council staff. Given the current financial climate, a review of the 'redundancy multiplier' is therefore appropriate.

2. Proposal

- 2.1 That the 'redundancy multiplier' be reduced from three to two for staff aged under 55 at the time of dismissal by reason of redundancy.
- 2.2 That the 'redundancy multiplier' be reduced from three to 1.5 for staff aged 55 or over at the time of dismissal by reason of redundancy.

3. Conclusion

- 3.1 The current arrangements are not affordable. The new proposal reduces cost (close to the local authority average from the survey shown at Appendix A) and reflects the additional benefits that over 55s receive.
- 3.2 If approved by the Personnel Committee on 20th September 2011, the revised severance policy will come into force after one month's notice to staff (in late October 2011).

Executive Report

1. Introduction

- 1.1 During 2010/11 WBC cut the number of employees on the staffing establishment by 83.32 FTE (100 employees) as agreed by the Executive in four separate reports. A further Adult Social Care (ASC) reduction in staffing took place between April and July 2011 bringing the total to 112 (85.72 FTE). This was in addition to the deletion of a number of other posts which were vacant.
- 1.2 The redundancy and premature retirement costs were largely met from central funds (a mixture of the 'Coping with the Economic Downturn' reserve and central reserves). The normal policy for meeting redundancy and premature retirement costs is that they are paid by the relevant service unless exceptional circumstances are approved by Corporate Board. The position in 2010/11 was an exceptional circumstance and therefore exit costs were met from central funds although some redundancy costs in Education were met from external grants (National Strategies and Sure Start).
- 1.3 In 2011/12 some of the costs of redundancy can be capitalised under a Capitalisation Directive from the government. This allows the statutory element of redundancy pay (capped at a maximum of 30 weeks and £400 for a week's pay and in the redundancy calculation) to be capitalised. However this will not cover the pension compensation costs for staff over 55, and is likely to cover less than half of the redundancy costs (because most staff made redundant are paid more than £400 per week gross pay). However this is still a welcome development which was not available to WBC in 2010/11.
- 1.4 The 2010/11 downsizing exercise was achieved with almost no employee relations strife. The number of appeals and grievances was very low. The trade unions were consulted on the proposed reductions in staffing at an early stage.

2. The redundancy multiplier – current position in WBC

- 2.1 Statutory redundancy pay is calculated by reference to an employee's weekly pay, their number of years' continuous service, and their age. Local authorities (under the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006 (DCR)) are able to increase redundancy compensation payments above the statutory minimum, up to a maximum of 104 weeks' pay.
- 2.2 Statutory redundancy pay is capped at a maximum of £400 for a week's pay. The current WBC policy uses actual week's pay rather than the statutory maximum figure. The Local Government Employers (LGE) 'Early Retirement and Compensation Survey 2011' shows that 94% of the 172 local authorities that responded also use actual salary to calculate a week's pay. This report does not propose any changes to this aspect of the current policy.
- 2.3 WBC currently has a policy of increasing redundancy pay for employees by multiplying the statutory number of weeks pay by a factor of three. This is known as the 'redundancy multiplier' of three. The multiplier of three was agreed by the Personnel Committee on 19th March 2007.

- 2.4 This policy applies to support staff in schools, but not to teachers (defined as employees paid under the provisions of the School Teachers' Pay & Conditions Document, STP&CD) who are subject to separate DCR. Teachers over 55 have the possibility of receiving added years of pensionable service under the Teachers' Pension Scheme.
- 2.5 Under the DCR 2006, the discretion to award added years of pensionable service was removed for staff in the Local Government Pension Scheme (LGPS) who were made redundant when aged over 50 (now 55). The award of "added years" only to those over 50 was deemed to be discriminatory on the grounds of age.
- 2.6 Employees aged over 55 automatically receive their accrued pension if they are made redundant (and are members of the LGPS), but without the possibility of "added years" of service to their LGPS record.
- 2.7 In 2007 authorities used their experience of the cost of awarding "added years" and/or using existing discretionary compensation powers, to work out a formula for redundancy compensation that would be fair to all staff regardless of age. Authorities were advised by LGE that basing their formula on a multiple of the statutory number of weeks would provide protection against age discrimination claims.
- 2.8 WBC had normally awarded up to a maximum of six and two thirds (dependant on length of service) "added years" to staff aged over 50 who were made redundant. By using this comparison of cost, the Personnel Committee agreed to use a multiplier of three in WBC for future redundancies.
- 2.9 It is important to note that in 2007 the Personnel Committee agreed not to 'augment' pension service for existing employees (a discretionary power contained within the LGPS regulations which is similar to added years but can be awarded regardless of age) whereas a small proportion of other local authorities included this additional benefit for staff in their discretionary severance policy. The LGE survey mentioned above shows that 88% of local authorities who responded to the survey do not award augmented membership (extra years of membership) under the LGPS rules. This report does not propose any changes to this aspect of the current policy.
- 2.10 The Personnel Committee in 2007 also agreed not to award additional pension (up to £5,000 p.a.) under the LGPS rules. The LGE survey shows that 98% of local authorities who responded to the survey did not award additional pension. This report does not propose any changes to this aspect of the current policy.

3. Issues to consider when reviewing the redundancy multiplier

3.1 Other authorities settled on different multipliers of between one and 3.4 (the maximum allowed). The 2011 LGE survey of 92 local authorities who answered a question on the size of the multiplier gave the following results (2010 figures are shown in parenthesis):

- (1) Multiplier of one = not asked in 2011 (6.3%);
- (2) Multiplier of 1.5 = 24% (15.2%);

- (3) Multiplier of two = 32% (31.6%);
 - (4) Multiplier of 2.5 = 4% (2.5%);
 - (5) Multiplier of three = 2% (2.5%);
 - (6) Using other formula for multiplier = 38% (48%).
- 3.2 Unfortunately there are no further details from LGE of the 38% 'using other formula' so it is difficult to draw reliable conclusions from this survey about the average multiplier used.
- 3.3 HR conducted a survey to ascertain what other local authorities used as their redundancy multiplier. HR contacted 28 local authorities, including neighbouring authorities and comparator authorities. In addition HR obtained the results of a survey by SW Employers which had 42 respondents.
- 3.4 The results of the survey are shown at Appendix A. The average redundancy multiplier from the survey is 1.86.
- 3.5 An important issue to consider is what benefits accrue to WBC from the use of a multiplier.
- (1) In 2007 the benefit was to maintain continuity between the cost of the very few redundancies which had occurred between 1998 and 2007, and any future redundancies after the abolition of 'added years'. However this benefit is no longer relevant in the changed circumstances of 2011/12 and beyond when redundancies are now likely to be much more common.
 - (2) In 2011 one benefit for WBC is to 'cushion the blow' for staff made redundant which is likely to assist staff morale.
 - (3) In 2011 another benefit is that using a multiplier which is at or near the average of 1.86 might help staff retention (as part of a comparison of all employee benefits between different employers).
 - (4) In 2011 another benefit is that, in a redundancy ring fence situation, employees are more likely to volunteer for redundancy if there is a multiplier. This is an efficient way of handling organisational change and improves efficiency within the authority.
 - (5) In 2011 another benefit is that the use of a multiplier will help to maintain good employee relations with the trade unions and staff. The pay levels in WBC are often less than neighbouring authorities and maintaining a redundancy multiplier for some or all staff can be seen as a way to provide other employee benefits rather than basic pay.
- 3.6 However a disadvantage of using a multiplier is that it increases the costs of redundancies at a time of financial strain on the Council.
- 3.7 WBC could reduce its future exposure to redundancy costs by reducing the level of the redundancy multiplier. The actual reduction in future exit costs cannot be specified in this report as it will depend on the circumstances (age, salary and

length of service) of the employees who are made redundant. Some hypothetical examples are given at Appendix C.

- 3.8 A reduction in the multiplier may attract a hostile reaction from unions and some staff and may damage employee morale. However WBC is currently at the more generous end of the spectrum and a move to a lower multiplier is justifiable by comparison with other local authorities.
- 3.9 Under the LGPS regulations, where an employer makes a member of staff aged 55 or over redundant then that triggers automatic payment of the pension rights that the employee has accrued in the scheme. Whilst membership of the pension scheme is not compulsory, staff would have to take a positive decision to opt out. It could therefore be argued that applying a criterion to employees aged 55 or over on the assumption that employees will be in the LGPS is fair even if a particular employee had decided not to be a member of the LGPS.
- 3.10 The cost of putting an employee's accrued pension rights into early payment has to be met by the employer. It can be argued that the benefits of using a multiplier listed above, particularly the desire of the Council to 'cushion the blow' of redundancy and to encourage staff to volunteer in a ring fence situation, will apply less to staff aged 55 or over because they are more likely to volunteer anyway to access their pension early (at a cost to the Council). It could therefore be argued that there is no need to also apply a multiplier to this group of staff (albeit not all such staff are members of the LGPS).
- 3.11 To apply a multiplier of 1.5 for staff aged 55 or over, and two for staff aged under 55, at the time of dismissal by reason of redundancy could be viewed as age discrimination. However legal opinion is that such a policy would not in fact be contrary to the law on age discrimination due to the following factors:
- (1) A comparison of person A and person B under the Equality Act 2010 must be between two employees *where the relevant circumstances in the one case are the same, or not materially different, as in the other*. The relevant position of an employee aged under age 55 who is made redundant is materially different from an employee aged 55 or over because the latter has access to his or her pension. Therefore the use of a differential multiplier would not be age discrimination.
 - (2) However, if the above conclusion were incorrect, it would still be possible to use a differential multiplier on the grounds that the less favourable treatment based on age is objectively justified. The measure will save the Council money but this is only part of the rationale for a differential multiplier. There is normally less need to 'cushion the blow' of redundancy or to encourage volunteers for those aged 55 or over (this is less so if employees have chosen to opt out of the LGPS, although such employees will have benefited from receiving higher net pay by choosing not to be in the pension scheme).
- 3.12 The use of a differential multiplier is very rare (as can be seen from the survey at Appendix A). However two other local authorities (Hillingdon and Bracknell Forest) have, for several years, used a differential multiplier at age 55.

3.13 25% of employees as shown below (percentage of headcount at 25/08/11) are aged 55 or over. Of this number 22% (93 employees) are not members of the LGPS. 77% of the employees who are not in the LGPS are female (which is close to the ratio of female employees of 75%). Therefore 25% of the workforce would be adversely affected by a decision to award a multiplier of 1.5 to staff aged 55 or over (and one in five of this number, predominantly female employees, would be even more adversely affected because they have opted out of the LGPS). A slightly higher proportion of the male workforce would be adversely affected.

<i>At 25/08/11</i>	Male	Female	Total
under 55	17%	58%	75%
55 or over	7%	18%	25%
	24%	76%	100

3.14 The exclusion of teachers from the multiplier means that teachers effectively have a redundancy multiplier of one. The teacher unions have noted this inferior benefit in comparison to support staff although no pressure for a higher multiplier for teachers has been exerted to date. The difference can be justified because teachers have a basket of different terms and conditions compared to support staff and can still be awarded added years under the Teachers' Pension Scheme (unlike the LGPS).

3.15 The reduction in exit costs which would follow a reduction in the size of the multiplier will be separate to the pension costs (the compensation WBC has to pay to the pension fund when employees access their pensions early on redundancy if aged over 55 and normally under age 65). Employees aged over 55 automatically receive immediate payment of their accrued LGPS pension if they are made redundant, and these pension costs will remain as now.

3.16 Unison asked that the Council's policy is amended to allow it, on request from the employee, to use that part of the redundancy compensation package which is not statutory to purchase additional pension for the employee. This would be the difference between the statutory maximum of £400 per week and the actual week's pay used times the number of weeks in the calculation. This figure will be higher for employees under 55 if a multiplier of two is retained. The important point to note is that this would be cost neutral for the Council. It would simply mean paying part of the severance payment to the pension fund rather than the employee. The cost of buying additional pensions calculated by the government Actuary department and depends on age and gender. There are provisions within the pension scheme rules that adjust the value of the additional pension purchased if the pension benefits are put into payment earlier than age 65. If the Council decides to offer this option to employees it would simply be a matter of the Personnel Committee agreeing to a change in our 'discretionary powers' policy for Regulation 13 of the LGPS.

4. Options

4.1 Options for the future use of the redundancy multiplier are given below:

- (1) **Option A is to reduce the multiplier to one for all employees.** This option is the least expensive and avoids a split between employees based on age. However it is well below the average of 1.86 and is likely to damage employee relations and staff morale.

- (2) **Option B is to reduce the multiplier to 1.5 for all employees.** This option is more expensive than option A. It avoids a split between employees based on age. However it is below the average of 1.86 and could damage employee relations and staff morale.
- (3) **Option C is to reduce the multiplier to two for all employees.** This options avoids a split between employees based on age. It is slightly above the average of 1.86 and is therefore less likely to damage employee relations. However it is more expensive than options A and B.
- (4) **Option D is to keep the multiplier at three for all employees.** This option is not justifiable in light of the average of 1.86 and is not supported by officers because it is not affordable. However this option is supported by the trade unions and would maintain continuity between how employees were treated in 2010/11 and 2011/12.
- (5) **Option E is to reduce the multiplier to 2 for employees aged under 55 at the date of dismissal by reason of redundancy; and to reduce the multiplier to 1.5 for employees aged 55 or over** at the date of dismissal by reason of redundancy. It is less expensive than option C and avoids a large jump in the exit costs for an employee aged 55 compared to a colleague aged 54, which can be seen by employees as arbitrary and unfair. This option may risk a legal challenge for age (and possibly sex) discrimination. However it can be seen as an appropriate balance between protecting the public purse and supporting employees.

5. Conclusion

5.1 This report recommends the following option:

- (1) **Option E:** Reduce the multiplier to 2 for employees aged under 55 at the date of dismissal by reason of redundancy; and to reduce the multiplier to 1.5 for employees aged 55 or over at the date of dismissal by reason of redundancy. This option will reduce the multiplier from a factor of three to two for staff aged under 55; and from a factor of three to 1.5 for staff aged 55 or over (at the date of dismissal by reason of redundancy). In line with the statutory scheme, these will be capped at 60 weeks and 45 weeks respectively

5.2 This report also recommends that the LGPS discretions policy is amended to allow the Council to purchase additional pension with that part of the redundancy compensation package which is not statutory.

5.3 The final decision on a reduction in the size of the multiplier and the policy change around purchasing additional pension rests with the Personnel Committee who will consider this matter on 20th September 2011.

5.4 If the redundancy multiplier is reduced the change cannot take effect for a period of one month from the decision. Employees must be given one month's notice of the change (which will be undertaken by HR if appropriate).

Appendices

Appendix A – Local survey by HR of the redundancy multiplier used by other local authorities.

Appendix B – some hypothetical cases showing costs under different options.

Appendix C – Equality Impact Assessment

Consultees

Local Stakeholders:

Officers Consulted: Steve Duffin, Andy Walker, Joseph Holmes, CB.

Trade Union: Unison, GMB, Head Teachers and Teacher Trade Unions