

<b>Title of Report:</b>	<b>Market Supplement Procedure</b>	<b>Item 4</b>
<b>Report to be considered by:</b>	Personnel Committee on 19 September 2008	
<b>Forward Plan Ref:</b>	n/a	

**Purpose of Report:** To seek approval for a revised procedure for the application of market supplement payments to particular posts within the Council.

**Recommended Action:** To approve the revised Market Supplement Procedure (as set out in the appendix to this report) to apply to the review of all current market supplements and the introduction of any proposed new market supplements.

**Reason for decision to be taken:**

- 1) Under the Service Related Additional Payments Scheme in operation within the Council, where there is evidence that the Council's pay and grading structure is unable to match market salaries for specific posts, recruitment and retention problems may be addressed by the application of a market supplement payment.
- 2) The criteria for applying a supplement are set out in the scheme, but there is currently no formal process for determining the need for, or the level of, or approving the funding for such a payment.
- 3) In the current economic climate it is important that managers continue to have the flexibility to apply market payments to recruit and retain an appropriately skilled workforce. However, the Council must have regard to equal pay and ensure that such payments are affordable.
- 4) The attached procedure addresses these issues comprehensively and will, if approved, allow a systematic process for the review of current payments and the calculation and approval of new payments.

**Key background documentation:** West Berkshire Council Terms and Conditions of Service 1999 – Service Related Additional Payments Scheme

### **CPO14 - Effective People**

The proposals contained in this report will help to achieve the above Council Plan Themes and Outcomes by:  
Ensuring a pay and reward strategy that is flexible enough to respond to market factors and enables the Council to recruit and retain an appropriately skilled workforce.

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<b>Date Consulted:</b>	

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## **Implications**

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**Policy:** This procedure sits within the WBC Terms and Conditions of Service 1999

**Financial:** The Head of Finance has been consulted on the procedure.

There are financial implications at service level if managers determine that new market supplements should be agreed, or if the biennial review determines that existing supplements should be increased.

Of current supplements being paid under the procedure the maximum is £7,000 per annum, and the minimum £1,000.

The procedure requires a manager proposing a new market supplement payment to provide evidence of the funding source. All applications for new supplements require consultation with the Group Accountant. It is expected that new payments will normally be self-funding from amendments or deletions to existing vacant posts. Any bids for new funding will require sign off by the Chief Executive/Leader of the Council.

**Personnel:** This scheme is being proposed by Head of HR

**Legal:** The application of this procedure will allow the Council to demonstrate a transparent process and clear evidence for the application of a market supplement should it receive an equal pay challenge.

**Property:** n/a

**Risk Management:** There is a risk in not applying a transparent process to revised and new market supplements. The Council could be exposed to equal pay claims that it could not refute.

There is a risk in not continuing to use market supplements. The Council could find itself unable to retain and/or recruit sufficient skilled employees to ensure service delivery.

**Equalities Impact  
Assessment:**

Market Supplement payment are paid in relation to the post, not the individual appointed to the post. The procedure is therefore judged unlikely to have a differential impact on age, disability, race, sexual orientation or religious belief.

However, the external marketplace is still skewed in favour of higher salaries in traditionally male jobs, and this could impact on gender equality in the application of market supplement payments in WBC. The issue of the risk of equal pay claims (male/female) is addressed by applying a transparent process to the application of payments.

## Executive Report

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### 1. Introduction

- 1.1 A market supplement is an addition to salary on the evaluated grade, benchmarked to the external job market, considered necessary to recruit or retain essential staff.
- 1.2 The Local Terms and Conditions of Service for West Berkshire Employees (1999) – Service Related Additional Payments Scheme - sets out the circumstances in which the Council will consider paying a market supplement.
- 1.3 All market supplements currently being paid in West Berkshire Council were reviewed in Spring 2008. The review identified that, for some roles, there is a continuing need to pay market supplements.
- 1.4 The proposed Market Supplement Procedure does not involve a policy change. However, the process of review identified areas where the current market supplement procedure required strengthening. These aspects have been addressed in the draft procedure.

### 2. Reasons for the Proposed Changes to Procedure

- 2.1 Under the Service Related Additional Payments Scheme currently in operation within the Council, where there is evidence that the Council's pay and grading structure is unable to match market salaries for specific posts, recruitment and retention problems may be addressed by the application of a market supplement payment.
- 2.2 Whilst market supplements are well used in some service areas (e.g. ICT), there is evidence that, in other services, the potential to use such payments to help managers address recruitment and retention issues is not being fully exploited.
- 2.3 The criteria for applying a supplement are set out in the Scheme, but there is currently no formal process for determining the need for, or the level of, or approving the funding for, such a payment.
- 2.4 In the current economic climate it is important that managers continue to have the flexibility to apply market payments to recruit and retain an appropriately skilled workforce. However, the Council must have regard to equal pay and ensure that such payments are affordable.
- 2.5 The attached procedure addresses these issues comprehensively and will, if approved, allow a systematic process for the review of current payments and the calculation and approval of new payments.

### 3. Proposals

- 3.1 The proposed revised market supplement procedure clarifies aspects of the current policy for applying market supplements.

- 3.2 Currently, market supplement payments may be based on additional increments or on lump sum amounts. They are paid over and above the evaluated pay grade for the job, in addition to the salary on the relevant spinal column point. Under the proposed procedure, all market supplements will be clearly identified lump sums, distinct from the pay structure and reviewable after two years.
- 3.3 The proposed procedure clarifies the process for implementing new market supplements (for both recruitment and retention purposes) and strengthens the requirement to have appropriate and documented evidence to support the case for the application of a market supplement.
- 3.4 The proposed procedure also clarifies other points, such as:
- the requirement, where a market supplement becomes payable, to make a payment to other postholders with an exactly comparable job;
  - the requirement to make pro rata payments in the case of part time job holders;
  - the requirement to undertake biennial reviews of existing market supplements.
- 3.5 The proposed procedure requires a manager requesting a new market supplement payment to provide evidence of the funding source. All applications for new supplements require consultation with the Group Accountant. It is expected that new payments will normally be self-funding from amendments or deletions to existing vacant posts. Any bids for new funding will require sign off by the Chief Executive/Leader of the Council.

#### **4. Conclusion**

- 4.1 It is recommended that Personnel Committee approve the Market Supplement Procedure to ensure that managers continue to be able to address recruitment and retention issues based on market forces in a consistent, transparent and informed way.

#### **Appendices**

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Appendix A – Market Supplement Procedure  
 Appendix B – Request for Market Supplement Form

#### **Consultees**

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**Local Stakeholders:** n/a  
**Officers Consulted:** A group of Heads of Service with a specific interest,  
**Trade Union:** Rosemary Culmer, David Pearson, Eddie Hunter.






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# Market Supplement Procedure

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## Document Control

<b>Document Ref:</b>	HRMSP01	<b>Date Created:</b>	July 2008
<b>Version:</b>	1.0	<b>Date Modified:</b>	
<b>Revision due</b>			
<b>Author:</b>	Alison McBride	<b>Sign &amp; Date:</b>	
<b>Owning Service</b>	Human Resources		
<b>Equality Impact Assessment: (EIA)</b>	Date undertaken:		
	Issues (if any):		

<b>Chief Executive</b>	Sign & Date:	
<b>Corporate Director (Community Services)</b>	Sign & Date:	
<b>Corporate Director (Children &amp; Young People)</b>	Sign & Date:	
<b>Corporate Director (Environment)</b>	Sign & Date:	

## Change History

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## **1. Purpose**

- 1.1. The Council recognises there may be exceptional circumstances from time to time when, for particular jobs, acceptable recruitment and/or retention levels cannot be maintained to meet service need. In such circumstances, a separate element of pay, known as a 'market supplement', may be paid in addition to the evaluated rate of pay for a job.
- 1.2. The purpose of this procedure is to detail the process for applying market supplements to jobs in West Berkshire Council.

## **2. Applicability**

- 2.1. This procedure applies to all employees of West Berkshire Council, with the exception of school-based employees.

## **3. Roles & Responsibilities**

- 3.1. The Chief Executive has overall responsibility for ensuring that market supplements are managed appropriately in accordance with this agreed procedure.
- 3.2. Heads of Service are responsible for:
  - 3.2.1. making the case for applying new market supplements
  - 3.2.2. participating in the review of existing market supplements
  - 3.2.3. identifying funding for new market supplements and, where necessary, seeking approval for additional funding through the Council's budget bid process
- 3.3. The Head of Human Resources is responsible for:
  - 3.3.1. approving the case for new market supplements, in consultation with the relevant Head of Service and Corporate Director.
  - 3.3.2. overseeing the biennial review of all market supplements
- 3.4. Human Resources are responsible for:
  - 3.4.1. ensuring details of market supplements are included in employment contracts, where appropriate, with a specified end date.
  - 3.4.2. assisting Heads of Service in determining the appropriate level for new market supplements, by providing market pay data relevant to the post.

3.4.3. undertaking regular reviews of existing market supplements.

3.5. Group Accountants are responsible for:

3.5.1. confirming that costs for new market supplements can be met from savings within the service budget or from an approved funding bid.

#### 4. Introduction

4.1. West Berkshire Council operates a job evaluation scheme based on the Local Government version of the Hay scheme. All new jobs, or changed jobs, are evaluated and the pay grade is determined through the agreed job evaluation procedure.

4.2. The job evaluation scheme is based on ranking jobs within the Council against each other and does not take into account fluctuations in the labour market and current market salary rates for different types of jobs.

4.3. The payment of market supplements over and above basic pay is legitimate in circumstances where an employer needs to offer a higher pay level in order to attract or retain staff.

#### 5. Principles

5.1. The Council will pay market supplements in exceptional circumstances, where it is considered essential to maintaining adequate service provision and there is no other reasonable way of achieving the organisational aim.

5.2. Market Supplements may be paid in order to attract staff (recruitment) or in order to retain staff (retention), but only in circumstances where it can be demonstrated the current salary is below the market rate.

5.3. Market supplements will only be paid where a case for payment is properly justified, with supporting evidence (*see section 6 – Procedure for Implementing New Market Supplements*).

5.4. The market supplement must be paid as a clearly identified supplement to the evaluated salary for a fixed period until the next review.

5.5. Where a market supplement becomes payable, the market supplement will also be payable to any other postholder with an **exactly** comparable job (i.e. the postholder is working to the same WBC job description). Where similar posts exist (i.e. the job description is similar, but not identical), the market supplement procedure must be applied separately.

- 5.6. The market supplement will be paid on a pro rata basis for part time staff, according to the number of hours worked.
- 5.7. Market supplements will be reviewed every two years. Employees will be notified of any proposed changes to the level of market supplement at least 3 months before the change will take effect. *(See Section 7 for further details)*
- 5.8. Market supplements will be pensionable and will not be affected by incremental increases or annual pay awards. *(see Section 7 – Review of Existing Market Supplements).*
- 5.9. Any change to the market supplement will be implemented only as a result of a biennial review, supported by appropriate evidence. As a result of the review, the supplement will either be maintained at the existing level, or increased, reduced or withdrawn *(see section 7 – Review of Existing Market Supplements).*
- 5.10. Where a post has been approved to attract a market supplement, this must be recorded in the contract of employment. The contract of employment must include;
  - the normal salary ceiling;
  - the amount of market supplement;
  - the reason for the supplement; and
  - the fact that the supplement will be reviewed on a biennial basis, with the supplement increased, reduced or withdrawn where evidence supports this.

## **6. Funding Market Supplements**

- 6.1 New Market Supplements can only be approved where funding is available from either:
  - A vacant post that is being deleted or amended to generate savings, e.g. reduced hours or grade; or
  - A bid for additional funding for the relevant salary budget. All such bids must be approved by the Chief Executive and Leader of the Council.

## **7. Procedure for Implementing New Market Supplements**

- 7.1. The Head of Service must first determine that a market supplement may be required in principle, and then make the case for applying a new market supplement. The case must be agreed by the relevant Corporate Director and the Head of Human Resources.

- 7.2. Before submitting the case for approval, the recruiting manager should discuss the potential for applying a Market Supplement with Human Resources, who will advise on obtaining supporting information and calculating the amount of the payment.
- 7.3. The case for payment must be objectively justified and contain evidence of the following (where appropriate to the case):
- 7.3.1. consideration has been given to redesigning the job/team to provide the work in another way;
  - 7.3.2. it is uneconomical and/or impractical to engage agency workers/contractors to undertake the work;
  - 7.3.3. the post is essential to maintaining adequate levels of service;
  - 7.3.4. turnover rates and evidence from exit interviews;
  - 7.3.5. number and quality of responses to job advertisements (*where a market supplement is proposed as an aid to recruitment, the line manager must have attempted to recruit to the post.*);
  - 7.3.6. comparison with other jobs in the locality with a similar range of responsibilities\*;
  - 7.3.7. Where applicable, evidence that an identical role within a partner organisation is paid at a higher rate (this might apply to WBC posts in multidisciplinary teams);
  - 7.3.8. recommendation of appropriate value for the market supplement\*\*. The market supplement should be expressed as a fixed lump sum, not an incremental spinal column point.
  - 7.3.9. the availability of funding for the market supplement(s). In the case of identical posts, or where there is more than one postholder in a post (e.g. job share partners), the market supplement must apply to all postholders (on a pro-rata basis where the postholders are part time). The Head of Service should consult the Group Accountant to establish how the funding may be obtained (*See Section 6 – Funding Market Supplements*)

\* *Evidence for comparator jobs may be obtained from pay and benefits surveys (Human Resources may be able to provide relevant surveys) or through research of like posts in the local market (e.g. through researching local job adverts or through contacting local employers). Comparisons must not be made on job title/salary/advert alone. A job description and person specification must be obtained to ensure the comparator job is similar in terms of scope, management span, location in the organisation, responsibilities, budgetary*

*responsibilities etc.*

*\*\* The market supplement value will normally be based on the median maximum salary for a range of comparator jobs, though this may vary according to the availability of data. The market supplement figure should represent the difference between the maximum salary on the evaluated grade for the post and the median comparator salary. The figure will normally be rounded to the nearest £250. HR advice must be sought on this.*

- 7.4. The Head of Service should complete the proforma at appendix 1 ('Recommendation for New Market Supplement'). The form must include the names of all employees to whom the market supplement will apply, including those in *exactly* comparable jobs. This must be countersigned by the relevant Corporate Director and the Group Accountant, and forwarded to the Head of Human Resources for agreement.
- 7.5. The Head of Service or his/her designate should consult the relevant trade unions on the application of a new market supplement.
- 7.6. The Head of Human Resources will consider the recommendation and, after seeking further information as necessary, make a decision.
- 7.7. Where a Market Supplement is agreed Human Resources will advise payroll and amend employment contracts accordingly.
- 7.8. Where the Head of Human Resources does not agree with the request, he/she will refer back to the Corporate Director and Head of Service for further discussion.

## **8. Review of Existing Market Supplements**

- 8.1. Every September, Human Resources will identify posts which, by 1<sup>st</sup> April the following year, will have been in receipt of a market supplement for a minimum of two years. Human Resources will advise the relevant postholders in writing that a review will be undertaken and will undertake the review, in consultation with relevant Heads of Service.
- 8.2. The review will use up-to-date pay and benefits surveys (e.g. South East Employers Annual Regional Pay and Benefits survey, pay surveys from Hay Group, specialist pay surveys from industry/professional bodies). Where such surveys do not cover the full range of posts to be reviewed, it may be appropriate to commission bespoke pay surveys from South East Employers.
- 8.3. The Head of Human Resources has discretion to determine whether a bespoke pay survey should be commissioned and the cost of the survey will be met by Human Resources. Such a survey will only be purchased for the purpose of an

annual Council-wide review and not to demonstrate the case for applying a new market supplement.

- 8.4. As an alternative to a bespoke pay survey, it may be appropriate to research locally advertised jobs or contact other local organisations. Human Resources will undertake this work. No comparisons will be made on job title/salary/advert alone – job descriptions and person specifications must be obtained to ensure the roles are comparable.
- 8.5. Market Supplements will normally be calculated by identifying the median of the sample used.
- 8.6. Human Resources will consult with the relevant Heads of Service and Corporate Directors on the findings of the review and will confirm the outcome in writing to each employee by the end of December.
- 8.7. Where the review results in either an increase or decrease in (or cessation of) market supplement, this will be effective from the following 1<sup>st</sup> April. The employee has no right of appeal.
- 8.8. Any increase in payment will be funded from the salary budget of the relevant Head of Service.

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## Appendix 1

<b>Recommendation for New Market Supplement</b>	
<i>To be completed by the Head of Service, counter-signed by the relevant Corporate Director, and forwarded to the Head of Human Resources.</i>	
<b>Title, grade and service area of post for which payment is proposed</b>	
<b>Job Title</b>	
<b>Grade</b>	
<b>Service Area</b>	
<b>Justification for New Market Supplement Payment</b>	
Is this recommendation for a new market supplement : <i>(tick as appropriate )</i>	
to aid recruitment to a vacant post?	<input type="checkbox"/>
or	
to retain existing staff?	<input type="checkbox"/>
Please provide evidence that consideration has been given to redesigning the job or providing the work in another way.	
Please provide evidence that it is uneconomical and/or impractical to engage agency workers/contractors to undertake the work	

Please provide evidence to support the case the post is essential to maintaining adequate levels of service.	
Please provide turnover rates and evidence from exit interviews, where available.	
Please provide details of number and quality of responses to job advertisements ( <i>where recommendation for market supplement is as an aid to recruitment</i> );	
Please provide evidence of comparisons with other jobs in the locality with a similar range of responsibilities and, where applicable, comparisons with identical roles in a partnership organisation ( <i>attach additional information where appropriate</i> );	
<b>Recommended Value of New Market Supplement</b>	
Recommendation for appropriate annual value of market supplement	£
Rationale for the recommended value (how did you calculate the value?);	
Actual cost of the Market Supplement up to the next review date (including on-costs – tax, NI, pension)	£



<b>Source of Funding for New Market Supplement</b> (complete appropriate sections)			
Funded from deleted post		Post No	
Funded from amended post (please give details)		Post No	
Funding not available therefore budget bid required (All such bids to be approved by the Leader and Chief Executive before being built into the base budget)		Cost Centre	
<b>Service Group Accountant sign off</b> (attach email confirmation)			
<b>Name</b>			
<b>Signed</b>			
<b>Trade Union consultation</b> (attach email confirmation)			
<b>Name</b>			
<b>Date</b>			
<b>List other employees who will receive market supplement, if approved</b> (ie: all post holders in exactly identical posts)			
<b>Name of employee</b>		<b>Payroll number</b>	
<b>Senior Management sign off</b>			
<b>Head of Service</b>		<b>Corporate Director</b>	
<b>Name</b>		<b>Name</b>	
<b>Signed</b>		<b>Signed</b>	
<b>Date</b>		<b>Date</b>	

**Please forward form to Head of Human Resources**

**Head of Human Resources :**

Recommendation approved ?                      Yes                      No

Signed .....                      Date .....

*(Head of HR to forward a original to HR R&I team, with a copy to Head of Service)*

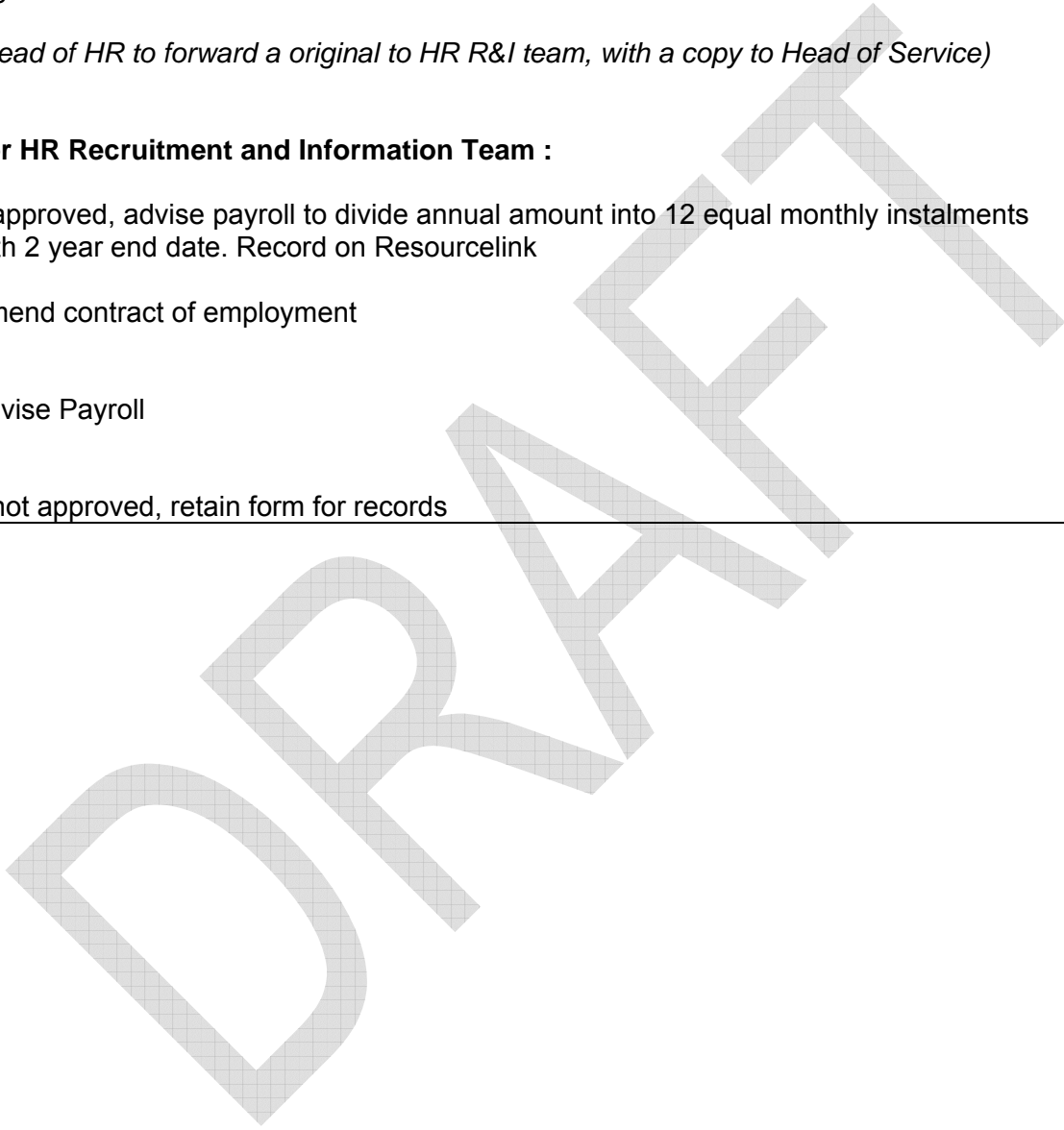
**For HR Recruitment and Information Team :**

If approved, advise payroll to divide annual amount into 12 equal monthly instalments with 2 year end date. Record on Resourcelink

Amend contract of employment

Advise Payroll

If not approved, retain form for records



**Request for Market Supplement Payment Form*****Please complete a separate form for each employee***

Name of Employee	
Payroll Number	
Cost Centre to be charged (if different to salary cost centre)	
<b>Annual value of market supplement (will be paid in 12 monthly instalments as part of salary)</b>	
Start date	
End date	
Amount of monthly payment	
<b>B. One off honorarium payment</b>	
Date of payment (month)	
Amount of payment	
<b>Reason for payment (tick box)</b>	
Consolidated overtime/additional hours	<input type="checkbox"/>
Consolidated non-standard working hours	<input type="checkbox"/>
Undertaking higher responsibilities	<input type="checkbox"/>
Exceptional working conditions	<input type="checkbox"/>
Exceptional performance	<input type="checkbox"/>
<b>Details (refer to WBC Service Related Additional Payments Scheme and give full details of the reason for awarding the additional payment and how you have determined the level of payment)</b>	
Signed (Head of Service)	
Date	

**For Human Resources Use**

Signed for Head of HR	
Date	

A copy of this form should be retained with the employee's personnel file.

<b>Title of Report:</b>	<b>Re-Employment Policy</b>	<b>Item 5</b>
<b>Report to be considered by:</b>	Personnel Committee on 19 September 2008	
<b>Forward Plan Ref:</b>	N/a	

**Purpose of Report:**

To seek approval for a new policy that sets out the circumstances in which the Council will re-employ ex-employees whose employment was terminated:

- With a redundancy or severance payment (and if over 50 premature retirement benefits) incurring a cost to the Council; or,
- Due to misconduct (short of gross misconduct) or underperformance due to ill health or capability.

**Recommended Action:**

- 1) Personnel Committee are recommended to approve the Re-Employment Policy (attached as appendix A)
- 2) Personnel Committee is invited to decide whether the period of time in which ex-employees covered by the policy may not normally be employed, or engaged on a contract for services, should be TWO or THREE years.

**Reason for decision to be taken:**

To ensure that decisions to employ or engage on a contract for service ex-employees are made in a fair and consistent manner, having regard to the need to safeguard the interests of council tax payers in West Berkshire.

To ensure that decisions to employ ex-employees, whose employment terminated because of misconduct or underperformance are made fairly and in the interests of the Council.

**Key background documentation:**

n/a

The proposals contained in this report will help to achieve the following Council Plan Theme(s):

**CPO13 - Value for Money**  
**CPO14 - Effective People**

The proposals contained in this report will help to achieve the above Council Plan Themes and Outcomes by:

Reducing the likelihood that the Council will employ ex-employees whose employment would compromise the interests or the public image of the Council.

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<b>Date Consulted:</b>	TBC

<b>Contact Officer Details</b>	
<b>Name:</b>	Jane Milone
<b>Job Title:</b>	Human Resources Manager (HR Policy and Strategy)
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**Implications**

- Policy:** If approved, this policy may have an impact on the employment of ex-employees working as consultants.
- Financial:** There are no direct financial implications arising from this report. All relevant cases must be approved by the Section 151 Officer before proceeding.
- Personnel:** This report is submitted on behalf of the Head of Human Resources. The policy will have an impact only on individuals who are no longer employees.
- Legal:** The proposed policy requires the Head of HR to consult the Monitoring Officer in cases of potential re-employment.
- Property:** n/a
- Risk Management:** There is a risk of not introducing a formal policy to control the re-engagement of ex-employees. The Council may risk a legal challenge and/or poor publicity if it re-employs an individual shortly after spending a money on severance arrangements.
- Equalities Impact Assessment:** This policy may have a differential effect on the grounds of disability. If the Council terminates employment because of underperformance (on the grounds of lack of capability due to ill-health), this may be because the employee has a disability. In such cases, a careful assessment of suitability for the new post applied for would be undertaken by the HoS and the Head of HR to ensure that there is no discrimination on the grounds of disability in the appointment process.

<b>Is this item subject to call-in?</b>	Yes: <input checked="" type="checkbox"/>	No: <input 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 type="checkbox"/>	
Delays in implementation could compromise the Council's position	<input type="checkbox"/>	
Considered or reviewed by OSC or associated Task Groups within preceding six months	<input type="checkbox"/>	
Item is Urgent Key Decision	<input type="checkbox"/>	

## Executive Summary

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### 1. Introduction

- 1.1 This report sets out a proposed approach to the re-employment of ex-employees where a cost to the Council (redundancy/severance payment and/or early retirement costs) was incurred as a result of the termination of employment, or where employment was terminated on the basis of misconduct or underperformance.

### 2. Proposals

- 2.1 Ex-employees whose employment terminated due to redundancy or in the interests of efficiency, at a cost to the Council, should not be re-engaged (as an employees or as a consultant) for a period of either two or three years. Exceptions to the rule may be approved by the Head of HR, in consultation with the Chief Executive, the Leader and Shadow Leader of the Council, the Section 151 Officer and the Monitoring Officer
- 2.2 Ex-employees who were dismissed on the grounds of gross misconduct should never be re-employed by the Council. Ex-employees who were dismissed on the grounds of misconduct (short of gross misconduct) or underperformance may exceptionally be re-employed subject to the approval of the Head of Service in consultation with the Head of HR.

### 3. Conclusion

- 3.1 It is recommended that the draft policy attached at appendix A be approved to regulate the re-employment of ex-employees within the Council with immediate effect, subject to existing cases (where severance arrangements are currently under negotiation) not being included under the new policy.
- 3.2 It is recommended that the Personnel Committee determine whether the time period after which a redundant employee, or one who has received an efficiency severance payment, may be re-employed freely should be two years or three years.

## Executive Report

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### 1. Introduction

- 1.1 From time to time the Council dismisses employees on the grounds of redundancy or makes severance arrangements in the interests of the efficiency of the service, involving the payment of compensation and, in some cases, an unreduced early retirement pension. These arrangements often involve a substantial financial commitment by the Council in the form of lump sum payments to the employee, and contributions to the pension fund.
- 1.2 A loss of confidence in the Council could arise if an employee left the Council's employment by reason of redundancy or efficiency of the service at a substantial cost to the Council and was promptly re-employed. The public might ask why the employee was allowed to leave with a severance payment in the first place. The same concerns might arise if the ex-employee was engaged on a self-employed, or other consultancy basis, at a cost to the Council.
- 1.3 In addition, it is sometimes necessary to dismiss employees on the grounds of misconduct (including gross misconduct) or on the grounds of lack of capability due either to ill-health or lack of skill or ability. The Council may put the interests of the organisation at risk if such ex-employees are re-employed without taking into account the reason for the termination of their previous employment.

### 2. **Re-employment of an employee whose employment was terminated on the grounds of redundancy or in the interests of the efficiency of the service.**

- 2.1 It is proposed that the general policy should be not to re-employ, or engage on a contract for services, any employee who left the Council with a severance payment and/or an unreduced early retirement pension within the last **[two/three]** years. After this period no restrictions will apply.
- 2.2 The Council needs to ensure that employees who are potentially redundant from one category of work are redeployed to other suitable vacancies rather than being made redundant and applying for the vacancy a short time later.
- 2.3 However, some jobs will not be suitable alternative employment in a redundancy situation but may be attractive to an employee who has received a redundancy payment and premature retirement benefits. For example, a manager who is made redundant may wish to apply for work as a Library Assistant for personal interest. Some categories of work are so important that a sudden emergency may mean that it is the best interests of the Council to re-employ, or engage on a contract for services, an employee who left recently on the grounds of redundancy or efficiency.
- 2.4 It is therefore proposed that exceptions to the general policy will be considered on their merits by the Head of Human Resources, in consultation with the Chief Executive, the Leader and Shadow Leader of the Council, the Section 151 Officer and the Monitoring Officer. It will be the responsibility of the recruiting manager and Head of Service to make the case for an exception to the policy.
- 2.5 The criteria to be taken into consideration when making a decision about an exception are set out in the policy. A paragraph (3.9) setting out positive criteria to be considered has been included following consultation with the unions. The



criteria which will make a decision to re-employ less likely are also set out clearly, including the issue of public confidence.

2.6 In order that existing employee relations casework is not compromised, it is proposed that cases which would be affected by the new policy at the time of its introduction should not be covered by it. Introducing new criteria part way through a case may jeopardise its outcome.

### **3. Re-employment of an ex-employee whose employment terminated on the grounds of misconduct or lack of capability (ill-health or lack of skill or ability)**

3.1 It is proposed that the general policy in such cases would be not to re-employ, with no qualifying period. The policy would apply to employees who were dismissed and to employees who resigned in circumstances where there was sufficient evidence to convene a formal hearing to consider dismissal.

3.2 Any employee who was summarily dismissed on the grounds of gross misconduct (or resigned as above) should not be re-engaged under any circumstances.

3.3 However, there may be circumstances where an employee whose misconduct was less serious, but nevertheless escalated into dismissal, may be suitable for re-employment into a different job. An employee who was unable to carry out the duties of a higher graded job, or a job requiring particular skills, may still be suitable for a different or lower graded job within the Council.

3.4 It is proposed that exceptions to the general policy would be considered by the Head of Service and the Head of Human Resources, taking into account the ex-employee's suitability for the new post under consideration. It is particularly important to comply with the requirements of the Disability Discrimination Act, and the duty to make reasonable adjustments, when making this judgement.

### **4. Conclusion**

4.1 It is recommended that the policy attached at appendix A be approved to regulate the re-employment of ex-employees within the Council with immediate effect, subject to existing cases not being included under the new policy.

4.2 It is recommended that the Personnel Committee determine whether the time period after which a redundant employee, or one who has received an efficiency severance payment, may be re-employed freely should be two years or three years.

### **Appendices**

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Appendix A – Re-Employment Policy (draft)

### **Consultees**

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**Local Stakeholders:** Corporate Board

**Officers Consulted:** Chief Executive, Head of Legal, Head of Finance, Head of Benefits and Exchequer

**Trade Union:** Rosemary Culmer – Staff Side Secretary



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# RE-EMPLOYMENT POLICY

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## Document Control

<b>Document Ref:</b>	HRRE001	<b>Date Created:</b>	Sept 2008
<b>Version:</b>	1.1	<b>Date Modified:</b>	4/9/08 To incorporate TU comments
<b>Revision due</b>			
<b>Author:</b>	Robert O'Reilly	<b>Sign &amp; Date:</b>	
<b>Owning Service</b>			
<b>Equality Impact Assessment: (EIA)</b>	Date undertaken:		
	Issues (if any):		
<b>Chief Executive</b>	Sign & Date:		
<b>Corporate Director (Community Services)</b>	Sign & Date:		
<b>Corporate Director (Children &amp; Young People)</b>	Sign & Date:		
<b>Corporate Director (Environment)</b>	Sign & Date:		

## Change History

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DRAFT

## 1. Purpose

- 1.1. The purpose of this policy is to set out the Council's approach to the re-employment of certain categories of ex-employees.
- 1.2. The Personnel Committee has approved the Re-employment Policy.

## 2. Applicability

- 2.1. This policy applies to ex-employees whose employment with West Berkshire Council terminated in the following circumstances;
  - Dismissal on the grounds of redundancy, where the employee received a redundancy compensation payment and, if aged over 50, premature retirement benefits;
  - Termination of employment on the grounds of efficiency with a severance payment and, if aged over 50, premature retirement benefits;
  - Dismissal on the grounds of misconduct or gross misconduct;
  - Dismissal on the grounds of lack of capability (ill-health or underperformance);
  - Resignation in circumstances where sufficient evidence existed to convene a formal hearing to consider dismissal on the grounds of misconduct or lack of capability.

## 3. Policy on ex-employees who left the Council's employment on the grounds of redundancy or efficiency and received a redundancy/severance payment and, if aged over 50, premature retirement benefits;

### General Policy

- 3.1. The Council will not engage such ex-employees on a contract of employment, nor engage them in a contract for services, for a period of [two/three] years from the date of termination. After this period there is no restriction on their re-employment
- 3.2. Engagement in a 'contract for services' means engagement as a consultant or provider of services. If the individual is re-employed as a self employed consultant s/he will be required to confirm this status with the Head of Benefits and Exchequer for tax and NI purposes in advance of the engagement.

### Exceptions to the General Policy

- 3.3. The Council recognises that there may be a compelling case for re-employment in some circumstances. These may be driven by the needs of the Council or

the needs of the ex-employee and the process for deciding cases is set out below.

- 3.4. The Council may within [two/three] years of termination re-employ, or engage on a contract for services, an ex-employee who left employment on the grounds of redundancy with a redundancy payment or efficiency with a severance payment (and premature retirement benefits if aged 50), subject to approval by the Head of Human Resources.
- 3.5. The recruiting manager will be required to submit a case in writing stating why an exception to the general policy should be made. No offer of employment, or contract for services, may be offered until the Head of Human Resources has given written permission to do so.
- 3.6. The Head of Human Resources will discuss the request with the recruiting manager and the relevant Corporate Director.
- 3.7. The Head of Human Resources will make a decision after consultation with the Chief Executive, the Monitoring Officer, the Section 151 Officer, and the Leader and Shadow Leader of the Council.
- 3.8. The following criteria will make it less likely that a request for re-employment or a contract for services will be agreed;
  - The cost to the Council of the severance was substantial;
  - The severance was in the recent past;
  - The employee volunteered for redundancy and did not wish to seek redeployment;
  - The funding of the service is in the public eye;
  - There are other alternatives available to cover the staffing need;
  - There are confidential, sensitive employee relations issues associated with the termination of employment.
- 3.9. The following factors will make it more likely that a request for re-employment or a contract for services will be agreed;
  - The employee did not volunteer for redundancy, early retirement or efficiency severance;
  - The new employment is for a short period (temporary), or casual, or for very few hours a week, and/or is on a lower salary grade than the original job;
  - The new employment is in a different capacity (job role or service area) to

the original job;

- The employee has scarce skills which the Council has demonstrated that it cannot secure easily elsewhere.

3.10. The recruiting manager may appeal to the Chief Executive if s/he does not agree with the decision of the Head of Human Resources.

**4. Policy on ex-employees who were dismissed on the grounds of misconduct or lack of capability, or who resigned in circumstances where sufficient evidence existed to convene a formal hearing to consider dismissal on these grounds;**

**General Policy**

4.1. The Council will not re-employ such ex-employees and there is no qualifying period.

**Exceptions to the General Policy**

4.2. The Council recognises that there may be a case for re-employment in some circumstances.

4.3. The Council will not re-employ an employee who was dismissed on the grounds of gross misconduct under any circumstances.

4.4. The Council may re-employ an ex-employee who was dismissed on the grounds of lack of capability, or on grounds of misconduct short of gross misconduct. Re-employment will be subject to an assessment by the Head of Service and the Head of Human Resources of his/her suitability for the new role in the light of the previous case.

**5. Roles & Responsibilities**

5.1. The Chief Executive has overall responsibility for ensuring that re-employment is managed appropriately in accordance with this policy.

5.2. Managers are responsible for;

5.2.1. Checking applicants' reasons for leaving any previous Council employment, at the shortlisting stage of recruitment.

5.2.2. If applicable, presenting to the Head of Human Resources a comprehensive case for exceptional re-employment outside the general policy.

5.3. The Head of Human Resources is responsible for;

5.3.1. Discussing the case with the recruiting manager and the Corporate

Director.

5.3.2. Consulting the Chief Executive, the Monitoring Officer, the Section 151 Officer, and the Leader and the Shadow Leader of the Council, in accordance with paragraph 3.11 above.

5.3.3. Assessing the case for exceptional re-employment outside the general policy and advising the recruiting manager in writing of his/her decision.

5.4. The Section 151 Officer and the Monitoring Officer are responsible for advising the Head of Human Resources of the financial and/or legal implications of re-employment or engagement on a contract for services.

5.5. The Head of Benefits and Exchequer is responsible for assessing the self-employed status of an ex-employee before a contract for services ( for example, as a consultant) is offered.

## **6. Failure to comply with the WBC Re-employment Policy**

6.1. Failure to comply with the Re-employment Policy could lead to;

6.1.1. A loss of public confidence in the Council, where an employee is re-employed soon after a financial commitment has been made to secure the termination of employment;

6.1.2. Undermining of the Council's management of conduct and performance by the employment of individuals whose previous conduct and/or performance has fallen well below that expected by the Council.

## **7. Review**

7.1. This policy will be reviewed every three years.



<b>Title of Report:</b>	<b>Retirement Procedure – Flexible Retirement</b>	<b>Item 6</b>
<b>Report to be considered by:</b>	Personnel Committee on 19 September 2008	
<b>Forward Plan Ref:</b>	n/a	

**Purpose of Report:**

To seek approval for amendments to the Council's Age Retirement Procedure to include provision for dealing with requests for flexible retirement.

**Recommended Action:**

Corporate Board are recommended to endorse the above procedure and associated documentation (contained within the appendices) for authorisation by the Personnel Committee.

**Reason for decision to be taken:**

- 1) The potential for employees to retire flexibly is already set out in the West Berkshire Council statement of policy on employer discretions under the Local Government Pension Scheme Regulations.
- 2) The proposed amendment to the retirement procedure and guidance notes will provide details on when and how this discretion may be exercised by the Council in practice.

**Key background documentation:**

- Local Government Pension Scheme Regulations Employer Discretions – Statement of Policy (see HR Intranet – Leavers, Retirement and Resignation)
- Retirement Procedure - Advice Notes for Managers
- Retirement Procedure – Advice Note for Employees.

The proposals contained in this report will help to achieve the following Council Plan Theme(s):

**CPO14 - Effective People**

The proposals contained in this report will help to achieve the above Council Plan Themes and Outcomes by:

- Ensuring that decisions to allow flexible retirement are taken fairly and consistently, having due regard to the budgetary implications for the Council.
- Enabling employees to plan a flexible retirement where this will also meet service needs.

<b>Portfolio Member:</b>	Councillor Anthony Stansfeld
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<b>E-mail Address:</b>	astansfeld@westberks.gov.uk
<b>Date Consulted:</b>	Please include date Portfolio Holder has agreed this report.

<b>Contact Officer Details</b>	
<b>Name:</b>	Jane Milone
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## **Implications**

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<b>Policy:</b>	The Council has already determined policy in the matter, as set out in the statement on employer pension discretions referred to above.
<b>Financial:</b>	The financial implications of these proposals will be confined to each case as it arises. If costs are incurred as a result of a flexible retirement, they must be found from within service budgets.
<b>Personnel:</b>	The report submitted by HR. It is unlikely that the proposals will affect many employees, as most wishing to retire flexibly will receive reduced pension benefits. However, it will allow a more flexible approach to employees towards the end of their careers and may assist in planning organisational change.
<b>Legal:</b>	n/a
<b>Property:</b>	n/a
<b>Risk Management:</b>	There are no risks associated with the amendment to the procedure.
<b>Equalities Impact Assessment:</b>	This procedure has a differential effect on employees on the grounds of age; only employees over the age of 50 can retire flexibly. However, this is a function of the pension scheme regulations and is thus outside the control of the Council.

## **Executive Summary and Report**

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### **1. Introduction**

- 1.1 The Age Retirement Procedure was introduced into West Berkshire Council in 2007, in response to the Employment Equality (Age) Regulations 2006. It is proposed that the main body of this procedure remains unchanged.
- 1.2 Since April 2006, the Local Government Pension Scheme (LGPS) has provided for 'flexible retirement'. This allows employees in the scheme, aged 50 or over, to continue working - on reduced hours or in a post with a lower salary - whilst drawing some or all of their accrued pension benefits. Employees continue to contribute to the pension scheme. All flexible retirement on this basis requires the consent of the employer.
- 1.3 The WBC Local Government Pension Scheme Regulations – Employers' Discretions Policy Statement allows for the consideration of individual applications for flexible retirement.

### **2. Proposed changes to the Retirement Procedure**

- 2.1 It is proposed that the procedure be renamed the 'Retirement Procedure'.
- 2.2 It is proposed that an additional section be included in the Retirement Procedure (and associated guidance notes) to explain the process for requesting, and considering requests for, flexible retirement. It will ensure that the approach to considering requests is reasonable and fair, and has due regard to the financial implications for the Council.
- 2.3 The proposed additions to the Retirement Procedure cover the flexible retirement options available for employees who are members of the Local Government Pension Scheme.
- 2.4 In many cases there will be no cost implications associated with the request, and the line manager will make a decision based on operational reasons (e.g. how to recruit to the remaining hours, impact on the team etc).
- 2.5 However, some cases will have a cost implication. The draft procedure requires these decisions to be referred to the Chief Executive, who can approve requests with a cost implication of up to £10,000 (in consultation with the Leader and Shadow Leader). Requests with a cost implication in excess of £10,000 will be referred to the Executive.

### **3. Conclusion**

- 3.1 Approval will be sought from the Personnel Committee for the additional section in the Retirement Procedure.

**Appendices**

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Appendix A – Retirement Procedure

**Consultees**

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**Local Stakeholders:** n/a

**Officers Consulted:** Head of Exchequer, Head of Finance

**Trade Union:** Rosemary Culmer, David Pearson, Eddie Hunter.

## Retirement Procedure

Reference: AMc/HR  
Version No: 0.2  
Issue Date: May 2008  
Classification:

### Document Control

<b>Document Ref:</b>	HR AR	<b>Date Created:</b>	June 2008
<b>Version:</b>	2.0	<b>Date Modified:</b>	
<b>Revision due (3 years from publication)</b>	Aug 2010		
<b>Author:</b>	Alison McBride Human Resources	<b>Sign &amp; Date:</b>	
<b>Chief Executive :</b>	Nick Carter	<b>Sign &amp; Date:</b>	

The Human Resource Service is responsible for reviewing and updating this procedure

### Change History

Version	Date	Description	Change ID
0.1		Updated to include Flexible Retirement Options	

### Linked Documents

Reference	Title	
	Retirement Advice Notes for Managers	
	Retirement Advice Notes for Employees	

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## 1. Purpose

- 1.1. The purpose of this procedure is to clarify how West Berkshire Council manages employee retirement.

## 2. Applicability

- 2.1. This procedure applies to all employees of West Berkshire Council

*NB: Flexible Retirement (Section 5) only applies to members of the Local Government Pension Scheme.*

## 3. Roles & Responsibilities

- 3.1. The Chief Executive has overall responsibility for ensuring that the process for retirement is managed fairly and effectively in accordance with this procedure.
- 3.2. The procedure has been the subject of consultation with trade unions and Heads of Service, and has been approved by the Chief Executive.
- 3.3. **Human Resources** will notify an employee of their retirement date no less than six months and no more than 12 months in advance of the date and will advise employees of their right to request to work beyond normal retirement age (NRA).
- 3.4. **Line Managers** are responsible for implementing the age retirement procedure within their service areas and considering any requests to work beyond NRA fairly and objectively.
- 3.5. **Line Managers** are responsible for considering any requests for flexible retirement fairly and objectively, taking account of any financial implications for the Council.
- 3.6. **Employees** are responsible for confirming their intention to retire, or request to work beyond NRA, no less than three months before the notified retirement date.
- 3.7. **Employees** are responsible for securing information from the pension provider, about the impact of flexible retirement on their pension benefits, before making a decision to retire flexibly.
- 3.8. **Senior Managers and Heads of Service** are responsible for managing the appeals process for age retirement.
- 3.9. Where the total cost to the Council of a flexible retirement will exceed £10,000, the costs must first be approved by the **Executive**. Below £10,000, the costs must be approved by the **Chief Executive in consultation with the Leader and Shadow Leader of the Council**.

#### 4. Procedure for Retirement at or after Normal Retirement Age

- 4.1. The Normal Retirement Age for employees of West Berkshire Council is 65. All employees have the right to request to work beyond this date and the line manager has an obligation to consider such a request.
- 4.2. Human Resources will notify an employee of his/her retirement date no less than six months and no more than 12 months prior to the 65<sup>th</sup> birthday, or the new retirement date if the employee is already working beyond NRA and a new retirement date has been agreed.
- 4.3. The employee should advise his/her line manager no less than three months before the retirement date whether he/she wishes to retire at the retirement date or whether he/she wishes to continue working beyond NRA.
- 4.4. If the employee wishes to retire at NRA, the line manager should inform Human Resources.
- 4.5. If the employee requests to work beyond the retirement date, the line manager must arrange to meet with the employee, within 10 days of receipt of the request. The employee has the right to be accompanied at the meeting by a Trade Union representative or work colleague.
- 4.6. The line manager should consider the employees request and inform the employee of the decision in writing within five days of the meeting. The line manager can chose to agree to the employee's request, or can chose to implement an alternative outcome; to extend the retirement date for a fixed period or to retire the employee at the retirement date. The line manager should also inform Human Resources of the outcome.
- 4.7. If the employee is not satisfied with the line manager's decision, he/she may appeal in writing to the next level of management within five working days of receipt of the letter from the line manager.
- 4.8. The appeal will be heard within 10 working days. The employee has a right to be accompanied at the meeting by a Trade Union representative or work colleague. The outcome will be confirmed in writing to the employee, and copied to Human Resources, within five working days of the appeal hearing. The outcome of this appeal is final.
- 4.9. Employees working beyond NRA will not be required to undertake a medical referral unless this is a requirement of the post and can be objectively justified. This would normally only be the case in roles where all postholders are required to undertake periodic medical assessments, for example, for health and safety reasons.
- 4.10. The procedure will be repeated each time an employee who is already working beyond NRA nears the revised extended point for retirement, as



discussed in the meeting between the line manager and employee (as described in section 4.6).

- 4.11. If an employee is working beyond NRA, but without a new agreed retirement date (i.e. indefinitely) the line manager can chose to retire the employee at any point. The line manager must apply the retirement procedure and write to the employee no less than six months and no more than 12 months before the proposed retirement date. The retirement procedure applies in full, and the employee will have the right to request a meeting with the line manager and will have the right of appeal.

## 5. Flexible Retirement Options prior to Normal Retirement Age

- 5.1. Flexible retirement may be considered for employees aged between 50 (55 from April 2010) and 65 who are members of the Local Government Pension Scheme (LGPS).
- 5.2. An employee over age 50 (age 55 from April 2010) can request to reduce his/her hours prior to retirement or move to a lower graded post and draw all or part of his/her pension benefits whilst continuing to work.
- Pension benefits may be reduced if the employee draws on them before 65.
  - The employee will need the Council's permission to retire flexibly.
  - The Council is not obliged to agree to the request, nor is there a right of appeal.
- 5.3. If the employee is aged between 50 (55 from April 2010) and 65, and does not meet the LGPS 'rule of 85' rule (see below \*), there will be no cost to the Council but pension benefits will be reduced. The Council can chose to waive the reduction in pension benefits, but will incur a cost in the form of a strain on the Pension Fund. Pension benefit reductions will only be waived in exceptional circumstances. (See Section 3 of LGPS Employers Discretions – Statement of Policy)
- 5.4. If the employee is aged between 50 (55 from April 2010) and 65 and either already satisfies the LGPS 'rule of 85' or would do so before age 60, the pension benefits paid on flexible retirement may be either paid in full or only partly reduced. A strain will be placed on the Pension Fund by the payment of pension benefits and the Council will have to make an additional payment to the Pension Fund if the request is approved. This payment can be spread over no more than three years with the addition of interest.

*\*NB: The 'Rule of 85' is where an employee's whole years in the pension scheme and age add up to 85 +. This rule is currently subject to national consultation and further changes may be made.*

- 5.5. Employees who wish to reduce hours of work but remain in the same job should request flexible retirement by completing the Request for Flexible Retirement Form (Appendix 3 of the Retirement Advice Notes for Employees) and forward the request to their line manager.
- 5.6. Employees who wish to move to a lower graded post will need to apply as and when a post is advertised, in accordance with the West Berkshire Council recruitment procedures. The employee will not have prior consideration for the post. Where the post is in a different service area, any costs associated with the flexible retirement will be met by the 'donor' service area.
- 5.7. All requests for flexible retirement must be considered. The 'Retirement – Advice Notes for Managers' contain advice on issues to consider when responding to requests for flexible retirement.
- 5.8. Requests should only be approved when it is in the Council's interests to do so. All costs falling on the Council as an employer must be affordable and within existing cash limits. Where this is not achievable, the proposal should be accompanied by a supplementary plan detailing how any costs will be recovered. All requests with cost implications must be submitted to the Chief Executive/Executive for approval (see 5.9) and Line Managers must consult the Group Accountant.
- 5.9. Where there are no cost implications for the Council, requests for flexible retirement can be approved by the line manager.
- 5.10. Where the total cost to the Council will exceed £10,000, the costs must first be approved by the Executive. Below £10,000, the costs must be approved by the Chief Executive in consultation with the Leader and Shadow Leader of the Council.
- 5.11. Where a request for flexible retirement is approved, the line manager must advise Human Resources. The contract of employment will be amended by mutual agreement to reflect the agreed changes and continuity of service will be preserved for terms and conditions purposes. The employee can continue in employment until he/she reaches the Council's Normal Retirement Age, at which point the Retirement at Normal Retirement Age process will be initiated.

## **6. Advice Notes**

- 6.1. Advice notes for Managers and Advice Notes for Employees are available as separate documents. The advice notes cover both retirement at Normal Retirement Age and Flexible Retirement options.
- 6.2. Contact the HR Operations team for advice on Ill Health retirement or retirement on the grounds of efficiency.