



## General Purposes Committee 7 December 2020

### Report from Chief Executive

## Voluntary Redundancy Scheme Approvals

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	N/A
<b>Open or Part/Fully Exempt:</b> (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
<b>No. of Appendices:</b>	Appendix 1 - Equality Assessment
<b>Background Papers:</b>	None
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### 1.0. Purpose of the Report

- 1.1. This report provides an update to the committee in respect of the council's 2020 Voluntary Redundancy Scheme. It also outlines the impact on the scheme of a current consultation concerning changes to the Local Government Pension Scheme and some changes already in force in new Regulations concerning public sector exit payments.

### 2.0. Recommendations

- 2.1 To note the proposed approach to redundancies where the cost of severance for an individual is in excess of £95,000 taking into account pension strain costs if an unreduced pension is paid pending clarity as to legal entitlements in those circumstances.
- 2.2 To note that none of the payments in respect of individuals pursuant to the voluntary redundancy scheme include any element in addition to sums calculated in accordance with the council's Managing Change Policy and the strain payments that would arise under the Local Government Pension Scheme if unreduced pensions are paid.
- 2.3 To note the overall outcome of the Voluntary Redundancy Scheme run during September 2020.

- 2.4 To agree, as the administering authority of the Brent Pension Fund, to adopt the early retirement strain factors from Government Actuary's Department (GAD) as described in paragraph 5.17 – 5.21

### **3.0. Detail**

- 3.1. On 2 August 2018 the General Purposes Committee agreed that the council implement a Voluntary Redundancy Scheme in advance of planning and implementing restructures as part of re-modelling the council to achieve the savings required in the council budget over the following period. The Chief Executive was empowered to agree that the scheme also be run in future years. The 2018 scheme was successful in achieving savings and remodeling of the workforce and also facilitated succession planning and career progression, which was an issue highlighted in a recent staff survey.
- 3.2. This year the council again finds itself needing to undertake significant workforce reform and restructuring in order to achieve savings while continuing to deliver services on which the local community rely. The Chief Executive therefore authorised the running of a further voluntary redundancy Scheme in September 2020.

### **4.0 The recent programme to seek volunteers for redundancy**

- 4.1 Staff were invited to apply for voluntary redundancy as a means of avoiding the need for a programme of compulsory redundancy. The call for volunteers opened on 1<sup>st</sup> September and closed on the 2<sup>nd</sup> October 2020. 123 staff have applied for voluntary redundancy. It is proposed that employees who it is agreed may take voluntary redundancy under the scheme continue to work until the end of the financial year (31 March 2020) unless exceptionally another date is agreed by the Chief Executive.
- 4.2 All applications were assessed on the basis of the efficiency of the service and longer term financial considerations. A benchmark period of not more than two years for the cost of the redundancy to be offset by the consequent savings to the council (net of any saving reinvested as part of a restructure) was part of this assessment. A business case was prepared in respect of each application received and this was considered by Departmental Management Teams (DMT). Each business case has considered the cost of the individual redundancy and the savings associated with a deletion of the post, taking into account any associated restructure to ensure that the council can continue to deliver its services after the redundancy is implemented. The Council Management Team considered all the proposals from DMTs.
- 4.3 As a result of this process 75 applications for voluntary redundancy have been agreed and a further 12 are considered appropriate for approval but the cost of severance for the individual is in excess of £95,000 taking into account pension strain costs if an unreduced pension is paid. Paragraphs 4.7 to 4.14 below outline the legal uncertainties surrounding the severance payments that can be made in these cases and the proposed approach pending the legal position being clarified by a change in legislation or by a court of other legal decision.
- 4.4 For the avoidance of doubt, no exit payments in excess of normal contractual terms as described below are proposed as a result of the voluntary redundancy scheme by way of this report.
- 4.5 The council's redundancy payments scheme applies to employees with two or more years' continuous service with a body listed in the Redundancy Payments (Continuity of Employment in Local Government) Modification Order. Calculation of payments

under the council's scheme is based on the statutory scheme but actual salary rather than the statutory weekly maximum is used for this calculation. The calculation is as follows:

- 0.5 week's pay for each full year of service aged under 22
- 1 week's pay for each full year of service between the ages of 22 and 41
- 1.5 week's pay for each full year of service worked from the age of 41 and over.

- 4.6 This is subject to a maximum 20 years of service (30 x a week's pay is therefore the maximum available). In addition, a discretionary severance payment, equal to 50% of the redundancy payment so calculated, is currently made to those made redundant.
- 4.7 Employees who are made redundant who are aged 55 or over and have at least two years of pension scheme membership are normally entitled under the LGPS Regulations to immediate payment of pension benefits without reduction. Where this occurs the council can be required to make an actuarial "strain" payment to the pension fund to reflect the extra cost of paying an unreduced pension for the period up to the scheme member's normal retirement date under the LGPS.
- 4.8 This pension strain can be quite significant so that, for example, someone earning £40,000 p.a. with 30 years' service might attract a total exit payment (including pension strain) in excess of £95,000.
- 4.9 Under the council's own policies, exit payments in excess of £100k (including strain cost) are required to be approved by the Council or in some circumstances by the General Purposes Committee. However, The Restriction of Public Sector Exit Payment Regulations 2020 (The Exit Regulations) came into effect on the 4<sup>th</sup> November 2020. These regulations prohibit the council making any exit payments in respect of staff over £95,000 (the cap). The calculation of the payment amount includes the redundancy, severance and actuarial strain payments.
- 4.10 Within these regulations there is a 'Power to Relax' subject to approval by Full Council and after compliance with Directions and Guidance. The discretionary power to relax may only be exercised with the consent of the appropriate Minister of the sponsoring department (for local Councils that will be the Secretary of State for Housing, Communities and Local Government) and Her Majesty's Treasury. The guidance issued in respect of waivers is extremely restrictive and states that waivers will be granted only in very exceptional circumstances.
- 4.11 A consultation process has just concluded in respect of changes to the LGPS scheme which would change the provisions that currently provide for an unreduced pension to be paid to LGPS members who are at least 55 years old when made redundant and would provide a range of options instead, consistent with the Exit Payments Regulations. Pending changes being made to the LGPS Regulations, there is considerable uncertainty as to what payments may be made in respect of such LGPS members.
- 4.12 The Government has given guidance that an actuarially reduced pension or a deferred pension should be offered in these circumstances, along with a cash payment in place of the strain payment which brings the overall severance cost to not more than the £95k cap. However, the legislative basis for such a payment is unclear.
- 4.13 The LGPS Advisory Board have suggested that administering authorities take steps to manage their risk in respect of redundancies where the cost of severance for the

individual is in excess of £95,000 taking into account pension strain costs if an unreduced pension is paid, pending the legal position becoming clear. They suggest that an actuarially reduced or deferred pension without the cash payment referred to by the government, is offered. The council's actuaries have endorsed this approach as have some legal commentators.

- 4.14 It is proposed that the council take this approach, in respect of the voluntary redundancy scheme and any other redundancies while the position remains unclear. A number of threats of legal proceedings against the Government have been made, including by the BMA and a group of local authority organisations (LLG with the support of the Society of Local Authority Chief Executives and Senior Managers and Associations of Local Authority Chief Executives and Senior Managers). If as a result of a legal case or another relevant legal decision, or a change in legislation or government guidance it is established that an unreduced pension should be paid in these circumstances or that a cash payment as proposed by the government should be made, this can be implemented and backdated as appropriate.
- 4.15 This is an unsatisfactory position for the council and for the affected staff 3 of the 12 affected staff have withdrawn their request for voluntary redundancy on being informed of the current position. As a result, as the restructuring to achieve necessary savings and complete workforce reform and service change will still have to take place, there will have to be more compulsory redundancies than would otherwise be the case. This is damaging to staff morale, a drain on management resource at a time when staff are particularly stretched dealing with Covid-19 related issues and likely to mean increased disruption to services.
- 4.16 This also means that none of the proposed voluntary redundancies will attract a severance payments at this point in excess of £95k (or £100k for the purposes of the council's policy) and so no report will be made to full council. However, a report may be needed at a later date if unreduced pensions do become payable.
- 4.17 The Brent Pension Fund uses early retirement strain factors to calculate the strain charged to employers. These are developed to address the extra cost of paying an unreduced pension. The factors are Fund specific and therefore vary between different LGPS pension funds. They are based on each Fund's individual valuation funding assumptions and produce higher strains for women compared to men because women, on average, live longer than men. However, they were never intended to impact member benefits therefore in light of the £95,000 exit cap regulations, it is necessary to alter the strain factors to ensure they are still fit for purpose.
- 4.18 In order to minimise the risk of challenge from employers or members, the Brent Pension Fund has two options: to adopt the new draft Government Actuary's Department (GAD) strain factors or to use adapted Fund specific factors that will work with the current pension's administration software.
- 4.19 It is recommended to adopt the methodology and factors from GAD now. The advantages of taking this approach are that once the LGPS Regulations are updated for the £95k pay cap next year, it is expected that the Fund will be required to use these factors. Therefore adoption of this method ensures that a further change of factors is not required next year. Additionally, there is less risk of challenge as Fund specific factors will result in higher or lower strain costs and the use of GAD factors is likely to lead to more consistent results across funds.
- 4.20 The disadvantages of this approach are that the Fund's current administration system cannot use the GAD factors until an update is provided by the software developers,

therefore calculations will have to be done 'off the system'. Additionally, there is the small chance that the draft factors may change when the LGPS Regulations are updated. Overall, the approach being proposed has been endorsed by our actuaries and is consistent with the LGPS Scheme Advisory Board (SAB) guidance

- 4.21 Overall, the GAD factors are likely to produce lower strain costs than the existing Fund factors therefore fewer members will be subject to the £95,000 cap.
- 4.22 A meeting took place with the UNISON Regional Officer and the GMB Branch Convenor in which the position the Council was planning to take, as set out in this report, was discussed at length. Both Trade Unions were clear in their opposition to the Government's legislation in respect of Exit Payments and the detrimental impact this would have on their members going forward. However, both were appreciative of the Council's transparency in respect of the proposals in this report and considered them to reflect a reasonable approach in view of the difficult position in which the council finds itself. The Trade Union side indicated that they would like the council to seek waivers for those staff impacted by the Exit Cap, although they understood that the Directions and Guidance concerning when consent will be granted to waiver requests by central government are very restrictive.

## **5.0 Financial Implications**

The applications that have been accepted for voluntary redundancy result in an aggregate payback period of less than two years, net of any savings reinvested as part of a restructure, which is within the agreed benchmark for long term financial considerations. Additionally, this position would not change through the adoption of the GAD strain factors.

The net cashable savings from the budgeted establishment arising out of the accepted applications, subject to the uncertainties in LGPS regulations highlighted above, have been incorporated in the Council's Medium Term Financial Strategy.

The adoption of GAD strain factors will mean that the Brent Pension Fund is expected, on average to receive less funding than is necessary to cover the cost of the early retirement. The impact of this would be reflected in future valuations as an employer's funding position would deteriorate which will ultimately be recovered through the employer contribution rate. The Fund will be exposed to this once GAD's methodology and factors took effect. It is considered probably that these factors will be in effect in any event by 31 March 2021 when most voluntary redundancy scheme exits are likely to occur. This means that the Fund is unlikely to be significantly affected by adopting the factors now. This will however mean that the probable impact of the cap on individuals at the point they leave the council can be better predicted now. As indicated in the body of the report this is likely to mean fewer members being considered subject to the £95k cap.

## **6.0 Legal Implications**

- 6.1 The council has power to enhance the statutory redundancy scheme and to make severance payments to staff not eligible for that scheme under Regulations 5 and 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England & Wales) Regulations 2006 (as amended) where dismissal is for redundancy or efficiency reasons.
- 6.2 Under the Redundancy Payments (Continuity of Employment in Local Government) Modification Order continuous service with bodies listed in the Order is included in the

calculation of an employee's continuous employment for redundancy purposes.

- 6.3 The Government has put forward various proposals to reduce and standardise severance payments in the public sector. The only one of these which is currently operative is the cap on exit payments of £95,000 (Small Business, Enterprise and Employment Act 2015 and the Public Sector Exit Pay Regulations **2020**).
- 6.4 Other legal implications are contained in the body of the report.

## **7 Diversity Implications**

- 7.1 The public sector equality duty, as set out in section 149 of the Equality Act 2010, requires the Council, when exercising its functions, to have “due regard” to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, to advance equality of opportunity and foster good relations between those who have a “protected characteristic” and those who do not share that protected characteristic. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 7.2 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 7.3 An equality assessment has been undertaken in respect of this report and is attached as Appendix 1.

## **8 Background Papers**

- 8.1 None

**Report sign off:**

**Carolyn Downs**  
Chief Executive