

	General Purposes Urgency Sub-Committee Report
Date:	
Subject:	Amendments to the Terms of Reference of the Superannuation Investments Committee and related pension matters

1. Summary

- 1.1 An analysis of the governance principles for pension funds has identified that all pension management and operational matters are non-executive functions. Currently, general administrative functions relating to the payment of pensions etc are within the terms of reference of the Cabinet member for Finance and Support Services. Those functions have to be transferred to a non-executive Committee and it is recommended that they be transferred to the Superannuation Investments Committee.
- 1.2 Three new pension policies have recently been the subject of consultation with the staff and the unions. The draft policies were approved for consultation by the previous Cabinet member for Finance and Support Services (Councillor Barrow). These policies were meant to be in force by the end of June 2008. To comply with governance principles, they will have to be approved by a non-executive Committee. As these matters are not currently within the terms of reference of the Superannuation Investments Committee, it is recommended that the new policies are approved by this Committee.
- 1.3 The Cabinet member for Finance and Support Services approved a new compensation policy on termination of employment in October 2007. In view of the governance issues identified in this report, it is recommended that the decision is ratified and given retrospective effect by the General Purposes Committee.

2. Recommendations

- 2.1 That the Committee recommends to the Full Council that the Superannuation Investments Committee be renamed the Superannuation Committee and that the Council approves the new Terms of Reference for the Committee as set out in Appendix 1.
- 2.2 That the Committee approves the delegation of powers to the Director of Human Resources as set out in Appendix 2.
- 2.3 That the Committee approves the new cash value pension award policy as set out in Appendix 3.
- 2.4 That the Committee approves the new early payment of pension policy as set out in Appendix 4.
- 2.5 That the Committee approves the new flexible retirement policy as set out in Appendix 5.
- 2.6 That the Committee ratifies the compensation policy previously approved by the Cabinet Member for Finance and Support Services as set out in Appendix 8 and confirms that the policy is to have retrospective effect (i.e., that it is to have effect from 1 April 2007).
- 2.7 That members note that Appendix G to the report on the compensation policy originally submitted to the Cabinet member for Finance and Support Services (attached as Appendix 8 to this report) is exempt information under paragraph 5 of Part 1 of Schedule 12A to the Local Government Act 1972 (legal professional privilege). It has been circulated to members but is not available to members of the public.



City of Westminster

General Purposes Urgency Sub- Committee Report

Item No:

Date:

Classification:

Title of Report:

Report of:

Wards involved:

Policy context:

Financial summary:

Report Author:

Contact details

18 September 2008

For General Release

Amendments to the Terms of Reference of the Superannuation Investments Committee and related pension matters.

**The Director of Human Resources
The Director of Finance and Resources
The Director of Law and Administration**

All

Amendment to the Constitution and Governance Compliance issues relating to the Council's Superannuation Fund. Amendment to various pension policies.

No Financial Implications

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1. Background Information

- 1.1 The Superannuation Investments Committee approved a Governance Compliance Statement on 19 February 2008. The statement was published on 1 March 2008. The Department for Communities and Local Government had previously identified governance principles against which compliance has to be measured
- 1.2 One of the principles was “scope” which meant that Administering Authorities such as Westminster had to consider whether wider scheme issues were covered by the governance arrangements. A review of the arrangements currently in place has concluded that all pension functions are non-executive functions that need to fall within the terms of reference of a Committee or a Sub-Committee.
- 1.3 This report recommends new Terms of Reference for the Superannuation Investments Committee so that it has full responsibility for all pension matters, including those matters currently identified within the terms of reference of the Cabinet Member for Finance and Support Services. It also seeks to ratify a number of decisions already taken by the Cabinet member relating to various pension policies. These matters will in themselves mean that the Council achieves greater compliance with the governance principles referred to above.

2. Detail

- 2.1 The various issues that need to be addressed by the General Purposes Committee are set out below under their appropriate headings.

3. The Governance Compliance Statement and the current constitutional arrangements

- 3.1 The Superannuation Investments Committee has terms of reference which are essentially limited to investment matters, including the appointment of fund managers, agreeing the Statement of Investment Principles and the Funding Strategy Statement (including the fund’s Business Plan, if applicable), approving the Communications Policy Statement and the approval of the Governance Compliance Statement itself.
- 3.2 The Committee does not deal with matters such as benefits, membership, funding, contributions, payment of pensions and allowances and compensation for loss of office. These matters are currently within the terms of reference of the Cabinet member for Finance and Support Services. In addition, the Appointments Sub-Committee has terms of reference that allow it to determine pension matters relating to the Chief Executive, Chief Officers and Deputy Chief Officers.
- 3.3 In practice, day to day administrative matters are dealt with by officers in Human Resources who have a reporting line to the Cabinet member for Finance and Support Services. Any policy decisions are referred to the Cabinet member, the compensation policy referred to above being one such example.

- 3.4 In view of the issues raised by the completion of the Governance Compliance Statement, legal research was carried out to establish if the constitutional arrangements for dealing with pension matters at Westminster was strictly correct. That research has established that all pension matters and the requirement to formulate and publish a compensation policy on termination of employment are non-executive functions which means that they should not be included in the terms of reference of the Cabinet member for Finance and Support Services. The Leader will be asked to make the necessary amendment to those terms of reference in due course.

4. Amendments to the terms of reference of the Investments Committee

- 4.1 It follows from the above that the wider scheme issues currently within the terms of reference of the Cabinet member for Finance and Support Services will have to be dealt with via an alternative, non-executive route.
- 4.2 The General Purposes Committee has wide terms of reference that include all such non-executive matters. However, it is considered by officers that it is more appropriate for all pension matters to be dealt with by a specialist Committee of members who have received appropriate training (also in accordance with the governance principles referred to above).
- 4.3 The obvious route is to amend the terms of reference of the existing Superannuation Investments Committee which should, perhaps, be renamed the Superannuation Committee. The additional functions that will be transferred will obviously increase the work of that Committee. In due course, officers will discuss the options going forward with the Chairman of the Superannuation Committee. One option is to create a new Pensions Sub-Committee to deal with all the non-investment functions. Another is to create a new Investments Sub-Committee that will solely deal with Investment matters, thereby undertaking an identical role to the current Superannuation Investments Committee. However, that is something that can be determined by the Superannuation Committee itself.
- 4.4 Reference has been made in paragraph 3.2 above to the role of the Appointments Sub-Committee. The governance principles for the management of the Superannuation Fund suggest that the Superannuation Committee should have an overview of all matters that might have a financial impact on the Superannuation Fund. Any compensation payments that are authorised by the Appointments Sub-Committee will actually be met by the Council and not from the Superannuation Fund. This is a matter that can be considered in more detail by the Superannuation Committee in due course, though it is worth mentioning that if the Appointments Sub-Committee continues to determine the pension matters within its own terms of reference, it would be good practice for there to be a reporting line back to the Superannuation Committee.

- 4.5 The suggested new Terms of Reference for the Superannuation Committee are attached as Appendix 1 to this report. These are more extensive than the current Terms of Reference to reflect the transfer of functions from the Cabinet member for Finance and Support Services. As mentioned above, at paragraph 3.3, many of the administrative functions relating to day-to-day management of pension issues are dealt with by officers in Human Resources under delegated powers. The proposed functions that can appropriately be carried out under delegated powers by those officers are set out at Appendix 2.
- 4.6 The objective is that members establish the policy parameters, leaving individual decisions pursuant to those policies to be taken by the Director of Human Resources. The Director of Human Resources will not have delegated authority to determine any pension matters relating to the Chief Executive, Chief Officers and Deputy Chief Officers as they will remain the responsibility of the Appointments Sub-Committee. However, any such decisions taken by the Appointments Sub-Committee must still be taken in accordance with the policies set out in this report.

5. Status report on three new pension policies

- 5.1 As indicated above, the previous Cabinet member for Finance and Support Services has approved three new draft pension policies for the purposes of consultation with staff and the unions.
- 5.2 These draft policies are:
- (a) A policy on the award of additional pension;
 - (b) A policy on retirement before the age of 60; and
 - (c) A policy on flexible retirement
- 5.3 Details of the proposals for the 3 draft policies are attached at Appendices 3, 4 and 5.
- 5.4 The consultation process has now been completed. However, the policies have not been implemented within the time limits set out in statutory regulations. The policies should have been implemented by the end of June 2008.
- 5.5 In view of the comments made about the current constitutional arrangements, it will not be possible for the Cabinet member to give the final approval to these policies. It is therefore proposed that the new policies are approved by this Committee so as to avoid any further delay in their implementation. Any future review of those policies will be dealt with via the new constitutional process proposed in this report, i.e., via the new Superannuation Committee or its Sub-Committee.
- 5.6 A summary of the comments received from employees (four only) in response to the consultation exercise has been attached as Appendix 6 to the report. The names of members of staff have been removed to maintain confidentiality. Comments from and correspondence with the unions is attached as Appendix 7.

- 5.7 The two draft policies on early payment of pension (Appendix 4) and flexible retirement (Appendix 5) are slightly different to the policies that were the subject of consultation. The reason for that is because legal advice has been received indicating that some elements of the proposed policies were too rigid and did not allow a proper exercise of discretion. This also acknowledges some of the concerns that were expressed by staff in response to the consultation exercise. The amendments suggested do not alter the fundamental thinking behind the policies. They simply ensure that any decisions taken pursuant to the policies will be lawful. The legal advice has also confirmed that there has been no need to consult staff or the unions with regard to those changes as they are changes which do not prejudice staff and which can only be potentially beneficial to staff.
- 5.8 In the correspondence with the Unions attached as Appendix 7, there is a letter from the Director of Human Resources dated 4 August 2008. Within that letter there is a section on the early retirement policy where it is indicated that, in the few early retirement cases that have been agreed in the last few years, staff members have always been at least 55 years of age. For the avoidance of doubt, there have been two cases since 2000 where members of staff were, in fact, under 55 years of age. One case was in March 2000 and the other in March 2007. In both cases, the individuals concerned were not quite 54 years of age.
- 5.9 Members are also advised that when staff were consulted with regard to the policy attached as Appendix 4, it made reference to reaffirming current criteria. Unfortunately, however, those criteria were not set out in the policy document. No members of staff actually queried this during the consultation process. Had they done so, they would have been referred to the criteria. As the criteria are crucial to the operation of the policy, they have now been inserted as paragraph 5 of Appendix 4.

6. Compensation Policy on termination of employment

- 6.1 The compensation policy referred to above is the only other pension policy approved since 2001 when the new constitutional arrangements came into operation. This was “approved” by the Cabinet member for Finance and Support Services on 12 October 2007 as this was not an investment function and so did not fall within the terms of reference of the Investment Committee. It did, however, fall within the terms of reference of the Cabinet Member.
- 6.2 It is now apparent, for the reasons mentioned above, that those terms of reference are incorrect. It is therefore proposed that the policy is ratified with retrospective effect. A copy of the original report to the Cabinet member, the policy and the decision of the Cabinet member are attached at Appendix 8.
- 6.3 The recommendation is to ratify the policy with effect from 1 April 2007. The reason for that is because the original policy was already out of time when it was implemented by the Cabinet member on 12 October 2007. The policy should have been implemented with effect from 1 April 2007.

- 6.4 For the avoidance of doubt, the compensation policy on termination of employment arises whether or not an employee is an active member of the pension fund. It has no direct relationship with pension issues, though active members of the fund might have the option to convert the cash amount of compensation over and above the Statutory Redundancy Pay into additional membership so as to increase the final pension of the employee. This is commonly referred to as augmentation. Although the policy document refers to regulation 52 of the Local Government Pension Scheme 1997, augmentation is now provided under regulation 12 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.

7. Summary

- 7.1 Compensation might be payable when an employee leaves the Council so as to improve the efficiency of the service being offered. To the extent that compensation is payable to employees when there is a reorganisation within the Council that results in employees being made redundant, the actual reorganisation itself will continue to be determined by members as an executive function of the Council.
- 7.2 If the recommendations in this report are approved, the Superannuation Committee will have future non-executive responsibility for determining any changes to the compensation policy and will also have non-executive responsibility for determining any policy matters relating to payments or benefits under the pension scheme. These policies will apply to all members of staff, including the Chief Executive, Chief Officers and Deputy Chief Officers.
- 7.3 The Director of Human Resources will have delegated authority to reach decisions in individual cases (apart from the Chief Executive, Chief Officers and Deputy Chief Officers) having regard to those policies.
- 7.4 The Appointments Sub-Committee will continue to determine all appointments and dismissals of the Chief Executive, Chief Officers and Deputy Chief Officers and will continue to determine all pension matters relating to those officers. These will be non-executive functions and they will not be delegated to officers.

8. Financial Implications

Proposed Cash Value Pension Award

- 8.1 If any additional pension is awarded, the costs would have to be determined at the point of award and would have to be met from the departmental budget. However, no award would be made unless an employee could show that there were exceptional circumstances to justify the award.

Proposed Early Payment of Pension Policy

- 8.2 It is not considered that the redefined early retirement policy will have significant financial implications. This is because, although staff could previously retire from age 50 with their employers consent, most recent cases agreed were for staff who were at least 55 because the costs were more viable. As mentioned above in paragraph 5.8, there have only been two cases since 2000 where members of staff were, in fact, under 55 years of age. One case was in March 2000. The most recent case was in March 2007. In both cases, the individuals concerned were not quite 54 years of age.
- 8.3 In individual cases, any costs to the pension fund will have to be reimbursed from Council funds and these costs are included in the criteria for determining whether or not to grant early retirement. It follows, therefore, that in those cases where early retirement is granted, the cost will have to be met out of existing departmental budgets.

Proposed Flexible Retirement Policy

- 8.4 As the proposed flexible retirement policy is that flexible retirement is unlikely to be granted to employees under the age of 60, there are unlikely to be any direct costs for the committee to be aware of. However, the cost of any flexible retirement that is granted to an employee who is under 60 years of age will have to be met from departmental budgets.
- 8.5 As it is unlikely that any actuarial reductions will be waived (see paragraph 6 of Appendix 5), it is not envisaged that any significant costs would be borne in respect of this.
- 8.5 There could be some indirect costs if a section needed to recruit another member of part time staff, for example in order to allow a full time member to reduce their hours. It is equally possible however that there could be cost savings if the overall hours needed to be worked were reduced without the department funding a redundancy.
- 8.6 Managers supporting a request would be expected to demonstrate consideration of work and cost issues.

9. Legal Implications

- 9.1 The Council must formulate and publish a compensation policy on termination of employment. The Policy has been in place since October 2007 but was determined by the Cabinet member for Finance and Support Services. It should not have been determined by the Executive. Technically, the Policy has not been lawfully implemented, though the policy and any decisions taken under delegated powers pursuant to that policy can be ratified.

- 9.2 This report proposes that the policy itself is ratified with effect from 1 April 2007. Any decisions taken by the Director of Human Resources or the Director of Organisational Change pursuant to that policy will also need to be ratified. If this Committee ratifies the policy as recommended, the Director of Human Resources can then ratify any decisions taken pursuant to that policy. If the policy is not ratified, any decisions taken pursuant to it may have to be reconsidered in accordance with any alternative policy that is agreed.
- 9.3 In addition, the three new pension policies referred to above were not implemented by the end of June 2008 as required by regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008.
- 9.4 In view of the fact that all four policies were not implemented in accordance with the legal requirements, a short report will be prepared by the Monitoring Officer to the full Council in accordance with provisions contained in section 5(2) of the Local Government and Housing Act 1989 (the 1989 Act). This requires the monitoring officer to report to the authority when it appears to him that a proposal, decision or omission by the authority has given rise to a contravention of any enactment.
- 9.5 In preparing his report, the monitoring officer has to consult with the Chief Executive and the Director of Finance as required by section 5(3)(a) of the 1989 Act. A copy of the report will also be sent to every member of the Council in accordance with section 5(3)(b) of the 1989 Act.
- 9.6 It is mentioned in section 7 above that the Appointments Sub-Committee will continue to determine all appointments and dismissals of the Chief Executive, Chief Officers and Deputy Chief Officers and will continue to determine all pension matters relating to those officers. That is in accordance with Standing Orders and regulations made pursuant to the Local Government and Housing Act 1989.
- 9.7 Those same regulations also provide that members cannot be involved in the appointment or dismissal of staff below Deputy Chief Officer level apart from when they are involved in any appeal process against disciplinary action that has been taken, including any appeal against dismissal. That is why this report also recommends that the Director of Human Resources has delegated authority to determine any compensation that might be payable, albeit in accordance with the policy set out at Appendix 8 of the report.
- 9.8 The remaining policies are solely concerned with pension matters. It is considered that any operational decisions taken pursuant to those policies are more appropriately determined by officers so as to avoid potentially large numbers of applications having to be submitted to the Superannuation Committee. However, those matters will be determined in accordance with the policies that have been determined by members and any pension decisions in respect of the Chief Executive, Chief Officers and Deputy Chief Officers will still be retained by the Appointments Sub-Committee.

10. Staffing Implications

10.1 There are no direct staffing implications.

11. Outstanding Issues

11.1 There are no outstanding issues.

12. Consultation

12.1 No consultation is required

If you have any queries about this report or wish to inspect one of the background papers please contact Julian Sivill on 020 7641 2433, Fax 020 7641 3053, email jsivill@westminster.gov.uk.

APPENDIX 1

TERMS OF REFERENCE OF THE SUPERANNUATION COMMITTEE

To have responsibility for all aspects of the investment and other management of the Council's Superannuation Fund, including but not limited to the following matters:

- to agree the investment strategy having regard to the advice of the Fund's managers and the independent adviser;
- to monitor performance of the Fund and the individual Fund Managers;
- to determine the Fund management arrangements, including the appointment and termination of the appointment of Fund Managers, Custodians and Fund Advisers;
- to agree the Statement of Investment Principles, the Funding Strategy Statement, the Business Plan for the Fund, the Governance Policy Statement, the Communications Policy Statement and the Governance Compliance Statement and to ensure compliance with these;
- to approve and publish the pension fund annual report;
- to prepare and publish a pension administration strategy;
- to make an admission agreement with any admission body;
- to ensure compliance with all relevant statutes, regulations and best practices with both the Public and Private Sectors;
- to determine the compensation policy on termination of employment and to make any decisions in accordance with that policy other than decisions in respect of the Chief Executive, Chief Officers and Deputy Chief Officers of the Council;
- to determine policy on the award of additional membership of the pension fund and to make any decisions in accordance with that policy other than decisions in respect of the Chief Executive, Chief Officers and Deputy Chief Officers of the Council;
- to determine policy on the award of additional pension and to make any decisions in accordance with that policy other than decisions in respect of the Chief Executive, Chief Officers and Deputy Chief Officers of the Council;
- to determine policy on retirement before the age of 60 and to make any decisions in accordance with that policy other than decisions in respect of the Chief Executive, Chief Officers and Deputy Chief Officers of the Council;
- to determine a policy on flexible retirement and to make any decisions in accordance with that policy other than decisions in respect of the Chief Executive, Chief Officers and Deputy Chief Officers of the Council;
- to determine questions and disputes pursuant to the Internal Disputes Resolution Procedures;
- to determine any other investment or pension policies that may be required from time to time so as to comply with Government regulations and to make any decisions in accordance with those policies other than decisions in respect of the Chief Executive, Chief Officers and Deputy Chief Officers of the Council.

APPENDIX 2

DELEGATIONS TO THE DIRECTOR OF HUMAN RESOURCES

1. To determine, after consultation with the relevant Chief Officers, compensation to employees (apart from the Chief Executive, Chief Officers and Deputy Chief Officers) in accordance with the Council's compensation policy on the termination of employment;
2. To determine, after consultation with the relevant Chief Officers, any pension related payments or benefits for employees (apart from the Chief executive, Chief Officers and Deputy Chief Officers), including:
 - (a) Individual decisions pursuant to the Council's policy on additional membership of the pension fund;
 - (b) Individual decisions pursuant to the Council's policy on additional pension;
 - (c) Individual decisions pursuant to the Council's policy on retirement before the age of 60;
 - (d) Individual decisions pursuant to the Council's policy on flexible retirement;
 - (e) Individual decisions pursuant to the Council's policy on any other pension matters that may be required from time to time so as to comply with Government regulations.
3. To determine questions and disputes on behalf of the employing authority or administering authority, as appropriate, pursuant to the Local Government Pension Fund Internal Disputes Resolution Procedures.

APPENDIX 3

Proposed Cash Value Pension Award Policy

1. Regulation 13 of The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 enables the Council, at its discretion, to award to an employee during any time of their employment or after leaving employment an additional amount of pension. The amount of any award shall not exceed £5,000 pension per annum.
2. The regulation does not provide any parameters or criteria for awarding pension (other than setting a maximum amount). The Council is therefore required to publish a policy which determines:
 - whether or not it will award at any time any award of pension, and if so:
 - the criteria for awarding any pension; and
 - the criteria of assessing the amount of any award of pension, and
 - who shall make the decision.
3. The Council has recently published a similar policy on awarding additional service (i.e., membership) to employees. This was changed and published in November 2007 and therefore it is recommended that the wording of this policy is reaffirmed. In that policy it was decided to not award any additional service unless this was in lieu of any compensation payment (in excess of the statutory redundancy payment) and would be down to the employee to choose.
4. On this basis, it is proposed that the Council does allow the award of additional pension **but only**:
 - In very exceptional circumstances where the award can be justified on compelling grounds and within existing service budgets.
(It should be noted that the requirement for very exceptional circumstances presumes a high level of justification will be required to access this provision).
 - Or where an employee who has been made redundant or leaves on efficiency of the service and elects to receive in lieu of the value of any compensation payment payable in excess of the statutory redundancy payment, such a pension.
5. It is further recommended that this policy is reviewed in 2 years time.

6. Where the employee so elects, the pension fund will need to be reimbursed accordingly. The table below shows the cost of £1,000 of pension at various ages and for both sexes.

Age of employee	Cost of awarding £1,000 pension	
	Male	Female
25	£4,880.00	£5,520.00
35	£6,840.00	£7,680.00
45	£9,480.00	£10,520.00
50	£11,000.00	£12,240.00
55	£12,640.00	£14,040.00
60	£14,560.00	£16,000.00

APPENDIX 4

Proposed Early Payment of Pension Policy

1. Regulation 30 of The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 enables the Council, at its discretion, to award the immediate payment of pension benefits to an employee who:
 - is aged 55 or over and under age 60;
 - has left the employment of the Council; and
 - has requested payment of their pension benefits.

In addition, if the pension benefits were to attract an actuarial reduction because of their earlier payment, the Council has a further discretion to waive that reduction on 'compassionate grounds'.

It should be noted however that for compassionate grounds to be accepted as justification this will presume both a significant and long term impact on the member.

By example:

A member is no longer able to work because they fulfil the role of a whole time permanent carer for their partner or child. The member's requirement to care full time for the dependent because of the severe long term care needs of that individual will need to be confirmed by a Doctor. Members living in the UK will also be expected to confirm that they are the recognised carer by receipt of a carer's allowance.

2. This regulation is almost identical in application to the wording of the former regulation that was universally known as the '85 year rule'. Since its inception in 1997 there have been circa 15 approvals and 2 refusals from employees who on leaving the Councils employment have requested their pension benefits be paid before age 60. There have also been circa 5 requests from employees who have left and subsequently requested early payment for various reasons usually on grounds of financial hardship or because they are caring for dependant partners/parents.
3. In allowing early payment of pension benefits prior to age 60 and in waiving any reduction to a pension, the Council will be required to reimburse from departmental budgets the additional costs incurred by the pension fund. The average cost of using this discretion is circa £45K.
4. It is proposed under the new policy :
 - To reaffirm the current criteria for applications under this policy;
 - To determine on an individual basis whether any actuarial reduction is waived due to 'compassionate grounds'.
 - That the department will reimburse the pension fund with the amount of any early payment cost.
 - That this policy be reviewed after two years from its initial implementation.

5. The “current criteria” referred to in paragraph 4 above are:

- (a) Additional cost incurred to the Pension Fund
- (b) Cost/operational benefit to the Council of early retirement
- (c) Impact on resources/skills on the division/authority
- (d) Exigencies of the service

Each case will be considered individually on its merits.

APPENDIX 5

Proposed Flexible Retirement Policy

Summary

Under Regulation 18 of the LGPS an employee who is aged 55 or over (or for two years only up to the 30 March 2010, is aged 50 or over), whose hours OR grade is reduced, may request immediate payment of their pension benefits and continue to remain in employment. The employer has discretion to allow the immediate payment of the pension benefits and also to waive any actuarial reduction where applicable. Whilst continuing in that employment the pension remains unabated.

Policy decision

The Council will not allow an automatic right to flexible retirement and immediate payment of pension benefits under this policy. To qualify for flexible retirement the employee must satisfy the personal criteria under the policy; points 1 and 2, and the manager must ensure that business needs are satisfied.

The following are the criteria for this policy:

Personal Criteria

- 1 The employee must submit a request in writing to their service manager: and
- 2 The employee must be aged 55 or over;

Business Needs Criteria

- 3 The manager must ensure that the criteria are met for the reduction in hours and/or the reduction in grade. There is no requirement for an employee to reduce both the hours and the grade to qualify.

Reduction in hours of the employee:

1. Any reduction in hours is made contractually permanent and must be at least a 30% reduction in previously contracted hours;
2. Employee will be unable to work additional hours above the newly (reduced) contracted hours whilst in that post;
3. Ability to show that there is no increase in employee costs by allowing this request

Reduction in grade of the employee:

Any reduction in grade shall be:

1. at least a minimum of two grades lower; or
2. one broadband grade under the proposed new reward structure
3. Ability to show that there is no increase in employee costs by allowing this request

The employee is unable to receive additional responsibility allowances or honorariums for covering a more senior role.

- 4 The Council proposes to limit flexible retirement to employees who have attained the age of 60 on grounds of cost, the ability to retain skilled staff and the capacity to manage the scheme. The Council will consider applications from employees who are 55 and under 60, but the application will not be granted unless the employee can show exceptional reasons why they should be granted flexible retirement at an earlier age.
- 5 Likewise, the Council will consider applications from employees who want to reduce their hours or grade but who do not meet the criteria set out above. Once again, the application will not be granted unless the employee can show exceptional reasons why they should be granted flexible retirement despite the fact that the criteria are not met.
- 6 The Council will not waive any actuarial reduction that is applicable to the employee's pension benefits unless the employee can show exceptional reasons why the actuarial reduction should not apply.
- 7 The pension will be subject to abatement if the employee subsequently leaves the employment of Westminster City Council and takes up any further employment with an employer who is subject to the LGPS.

The abatement will be calculated as follows:

The pension will be reduced, pound for pound, by the amount which the annualised rate of pay in the new employment, when aggregated with the pension (plus relevant cost of living increases), exceeds the annualised rate of pay (plus relevant cost of living increases) received immediately before the reduction in hours or, grade, immediately preceding the initial payment of the pension.

- 8 This policy be reviewed after two years from its initial implementation

APPENDIX 6

Staff Feedback on Proposed Flexible Retirement, Award of Additional Pension and Early Retirement Policies.

Employee	Summary of Issue and Response to Staff Member
Employee 1	Employee wanted to know how new early retirement / flexible retirement policy impacts on staff born before 1 st April 1956 i.e. those with 85 year rule protections.
	Response sent to member, flexible retirement has no impact on the 85 year rule. Advised member that all the 85 year rule means is that you could retire early without reduction to your benefits with your employers consent. Costs for under 55 year olds tend to make these cases prohibitive.
Employee 2	Asks if the policy should recognise those staff that are 55 by 2010 and retain the right to retire early as in redundancy.
	Response sent to member advises that members will still be protected for redundancy purposes up to 31/3/2010. Confirms costs to release benefits for under 55's is prohibitive.
Employee 3	Query raised was prompted by the flexible retirement policy, member wanted to know what happens if they reduce hours prior to retirement not after it.
	Response explained that part timers accrue service in proportion to the hours that they work but pension is always determined using the whole time equivalent rate of pensionable salary.
Employee 4	Asked about the apparent discrimination in the GAD factor tables reducing men and women's pension if paid early.
	Response explained that factors differ for Men and Women due to lesser life expectancy for men. This means that at the same age the liability to pay a women's pension is proportionately more and therefore a lesser annual reduction will apply over a longer period of time and amount to a similar reduction to a man's pension.
Summary	<p>The main area of interest from Staff is in relation to the age at which early retirement and flexible retirement will be considered.</p> <p>This is of particular interest for members whom will be 50 or over but under 55 until 31/3/2010 in the case of possible early retirements when the provision will be removed for under 55's.</p> <p>In addition staff may want to be considered for flexible retirement before age 60.</p> <p>Responses sent back to staff have advised that age limits have been agreed in particular on cost grounds.</p> <p>In addition flexible retirement requests could overwhelm departments if the age employees are eligible to request consideration is too low.</p>

APPENDIX 7

Our Ref: AM /cew /W estm inster

Please quote on all correspondence

e-m ail: anna.m eyer@ gm b.org.uk

Mr. Graham White
Director of Human Resources
Westminster City Council

By e-m ail: g.whitel@westminster.gov.uk

Dear Graham

RE: Pension Award (Added Pension) Early retirement
policy and flexible retirement policy

I am writing to you in response to the policies that have been forwarded to us in respect of pensions and early flexible retirement. This response is on behalf of all of the unions.

I wish to make the following comments in respect of the Pension Award (Added Pension) Policy. It is indicated within the policy that this will be made available either in lieu of a redundancy payment or in very exceptional circumstances. I think there needs to be further clarification as to what is meant by exceptional circumstances and when in fact somebody would qualify for payment as an exceptional case.

Also please note that there appears to be a technical error regarding the rates published. It would seem that the cost of awarding £1,000.00 pension to a 50 year old male should be £11,000.00 not £11,008.00.

Early Retirement Policy: I would like to draw to your attention the regulations in respect of early retirement to include one additional criterion for early retirement which does not appear to be included in the policy. It is in respect of employees who are members of the scheme on the 31st March 2008, as under the regulations they can retire early from the age of 50 so long as they do so before the 31st March 2010. Early retirement should be cost neutral through the application of an actuarial reduction. I therefore would ask you to include this additional criterion within the policy.

I note that the Council has retained the right to waive a reduction on compassionate grounds, although an example is provided, I think there should be further clarification as to what the criteria are for basing the requirement on compassionate grounds rather than leaving the policy vague.

Flexible Retirement Policy: The regulations allow members aged 55 or above (or for those aged 50 before April 2010 who are members of the old scheme) to avail of flexible retirement. The regulations actually specify that an employee must reduce the hours worked or the grade for employment to qualify. I note that Westminster have restricted those qualifications by only allowing flexible retirement from age 60 and stating that hours must be reduced by 30% or grade reduced by 2 grades. I would state that these are above the requirements of the regulations and unnecessary and therefore I would ask you to remove this from the policy.

I would also seek clarification as the document you provided indicates that either of these step down criterion must be met. However the wording of the proposed policy suggests that both a reduction in hours and in grade are needed. This is clearly not the case; therefore I would suggest that the wording is clarified to ensure that either criterion would apply.

I also suggest that the policy should make clear that decisions on stepping down employment and receiving pension are made in tandem so that no employee reduces hours or grades and does not receive a pension.

I also note that in relation to the policy you have indicated that those who do retire flexibly will be allowed to continue building up a pension in respect of their continuity of employment and this is very welcome. However I note that you also include your policy of abatement whereby you will reduce the pension of a pensioner who takes up a new post with an employer who participates in the LGPS. We would ask this policy to be removed as we believe it is of no benefit to members of employers and could be age discriminatory.

I trust further consideration will be given to the issues we have raised in relation to the policy.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Meyer', with a stylized, cursive script.

ANNA MEYER

ORGANISER

Graham White
Director of Human Resources:

Direct Line: (020) 7641

Fax No: (020) 7641 3053 or 2376

Email: GWhite@westminster.gov.uk

Ms Anna Meyer
GMB

PRIVATE AND CONFIDENTIAL

RE: Consultation on the Award of Additional Pension, Early Retirement Policy and Flexible Retirement Policy

Dear Ms Meyer

4th August 2008

Thank you for responding to our invitation to consult on the above pension policies on behalf of all of the Unions. Could you please confirm which unions you have responded on behalf of, so as I can ensure that I have provided them with a copy of this response?

Award of Additional Pension Policy

You raised two issues in respect of this policy.

Firstly, you requested further clarification regarding exceptional circumstances.

Westminster City Council (WCC) would not be minded to specify particular circumstances where we would award additional pension other than where an employee uses an additional severance payment as indicated in the compensation policy. The award of additional pension policy includes the provision to consider exceptional circumstances and whilst we do not foresee such occasions it is important to ensure the facility is there in case something does arise which we cannot foresee at the point of producing the policy.

It is not our intention to use this policy to enhance payments in redundancy cases beyond that already described in the compensation policy and it is not intended to use this as part of any compromise agreement with an employee.

Secondly, you highlighted an error in the rates.

I confirm that there was an error in the cost of awarding a Male age 50 £1000.00 of additional pension and the policy document will be amended to reflect costs of £11000.00 not £11008.00.

Early Retirement Policy

You raised two issues in respect of this policy.

Firstly, you requested inclusion of an additional criterion.

I am aware that the regulations would allow us to consider staff who are 50 for early retirement up to the 31st March 2010. Qualifying staff made redundant will automatically still be entitled to payment of their benefits.

However after much consideration we do not intend to extend our consideration for early retirement cases to active staff members under 55. Far from being cost neutral there are significant costs associated with early retirements and the younger the member the higher the costs. I would suggest this is one of the main reasons why the Regulations have been amended to increase the earliest retirement age to 55.

WCC must balance the interests of staff against that of the service requirements. The need to retain one of our most valuable resources in the staff that we have is of paramount importance and therefore not in our opinion compatible with continuing to allow staff not yet 55 to request early retirement.

In the few early retirement cases that WCC has agreed to in the last few years the staff members have always been at least 55 and therefore I do not see any practical benefit to employees or Managers in amending the policy as you suggest.

Indeed the additional burden on Managers required to investigate and summarise a case for consideration where that member is unlikely to succeed on cost grounds alone cannot be acceptable as we move forward. In addition staff would also find refusals stressful and I feel we would be more honest with all staff members in refusing to consider cases for anyone under 55 as will be the case for all authorities from 1st April 2010.

As regards further defining the criteria for waiving any actuarial reduction beyond the example already in the early payment of pension policy.

I can confirm that the wording to this particular part of the proposed policy was carefully considered. At this point in time we can only envisage waiving any reduction in the early payment of a pension on the specific grounds that we mention in the policy. I.e. where a member is the full time carer for their partner or child with severe long term care needs. This is in line with our practical experiences in the last few years where a few preserved benefit cases released early have had reductions waived in exactly these circumstances.

Secondly, you requested further clarification regarding compassionate grounds

We have chosen not to rule out any other type of case to consider waiving of reductions on compassionate grounds in case an example does present itself that the Council considers meets the significant and long term impact on the member as described but does not meet the carers example.

Flexible Retirement Policy

You raised 3 points in respect of this policy

Firstly, you queried our requirements re age, hours and grade are above the regulations.

I will firstly deal with the reasons why WCC feels that it is appropriate to only consider applications from staff that have reached their 60th Birthday.

Firstly WCC need to retain as many skilled staff as possible on a permanent basis. Additional recruitment costs are another consideration in flexible retirement along with other indirect costs such as training new staff and other on costs that may increase if you end up employing two part time staff members instead of one full time member.

Departments may well struggle to accommodate staff wishing to flexibly retire if too many become eligible. By limiting this policy as applicable to staff age 60 or over we stand a better chance of trying to accommodate as many staff as possible, whilst still retaining our ability to deliver services.

Furthermore over the last decade employers have had to deal with increasing pension costs. The main reasons behind this has been reduced investment returns and a change in the actuarial valuation methods to take into account the increased life expectancy of members of the pension scheme. The effect of both of these has been to firstly reduce the income into the pension fund and secondly increase the liability for each member as their life expectancy increases from the latest available data.

These pressures have lead to an increased employer's contribution rate which for WCC's is currently 13.8%. Next year this will increase to 15.1% and 16% in the following year. Increasing cost pressure has also been felt by contributing staff many of whom faced an increase in the contributions that they pay when banding was introduced from April 2008. With cost sharing reviews between employees and employers ongoing and further funding pressure from poor returns it is in both parties general interests to ensure costs are minimised if a final salary scheme is to survive for the LGPS. WCC therefore decided to restrict its flexible retirement policy to staff aged 60 or over.

Age 60 is a traditional retirement age within the LGPS although the scheme's normal retirement date is still 65. Age 60 is seen as a more realistic retirement date to set staff for planning purposes in particular because of the costs but also because of the changing culture in this county of retirement ages where even the state retirement age is set to increase to age 68.

In summary therefore WCC chose to consider flexible retirement from Age 60 on cost grounds, to retain our skilled staff and our capacity to manage such a scheme.

On the restrictions within the proposed policy where we will require staff retiring to take a reduction in hours of 30% or a reduction in grade by at least two grades I have the following comments.

Where staff meet the age requirements and wish to carry on working but draw their pension benefits there must be a divider between those staff and those who choose to continue or are not allowed for service reasons to flexibly retire.

In essence there has to be a balanced approach taking account of the benefits and the costs in making this decision for both employee and employer. Flexible retirement is about an individual finding a different work life balance as they wind down to permanent retirement. This ethos does not sit well where staff are not allowed to make choices to reduce either their working hours or the responsibility and associated grade. Members must be allowed to make a choice about what is important to them.

In our briefing note under sections four, section six and section ten we refer to the requirement to reduce hours or grade so I cannot see that this is unclear. Application of the flexible retirement policy will require either a reduction in hours or grade but not both.

WCC considered the proposed flexible retirement policy carefully before seeking feedback. We believe the proposed policy is well balanced between providing staff approaching retirement with options and minimising cost burdens and other service pressures within WCC. The choice allows staff members to flexibly retire and draw their pension whilst reducing their salary or alternatively to either carry on working in their existing role drawing a full salary. Finally members can retire from WCC permanently and drawing no salary.

Secondly, you asked that decisions regarding stepping down and receiving pension are made in tandem.

By definition flexible retirement within the LGPS is where a member carries on working whilst drawing part of their pension benefit. As such it is an integral part of any report a manager may prepare for consideration by the relevant Cabinet Member upon request by a staff member.

A manager would not refer to the flexible retirement policy if his staff member just wanted to reduce their hours or maybe grade and not draw their benefits and therefore I am not sure I see any need to clarify this particular point more clearly.

Thirdly, you requested that abatement be removed from the policy.

As you know, we currently abate pensions for members who have left WCC and have either been reemployed by WCC or another employer where they would be subject to the LGPS.

It would not be reasonable to apply a different approach to employees who choose to retire flexibly and then leave the post that they flexibly retired in.

Consultation has now been concluded and we will look to ratify all three new policies at the General Purposes Committee (GPC) as soon as possible. We will advise all staff and Unions as soon as these have been approved.

Yours sincerely

Graham White
Director of HR

APPENDIX 8



City of Westminster

Executive Summary and Recommendations

Decision Maker:	Cabinet Member for Finance and Support Services
Date:	1 October 2007
Subject:	New Compensation Policy
<p>1. Summary of this Report</p> <p>2. This report sets out a proposed new Compensation Policy replacing the Compensation and early retirement schemes agreed in 1997 and 1999. This is as a result of the enactment of the Employment Equality Age Regulations 2006 and the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006.</p> <p>Recommendation</p> <p>2.1 That the Cabinet Member notes:</p> <ul style="list-style-type: none">• the views of employees and their representatives presented through the consultation process (Appendix C);• the replies sent to the unions following the consultation period (Appendices D and E);• the arrangements for the reference under the disputes procedure to the Joint Staff Committee (Appendix D); <p>2.2 That the implementation of a single new Compensation Policy as detailed in Appendix A be approved.</p> <p>2.3 That, subject to the approval of 2.2 above, the revised policy detailed in Appendix F for augmentation of service in the pension fund be approved.</p> <p>2.4 That the compensation policy be reviewed within two years of operation to ensure that it continues to meet the Council's objectives.</p> <p>2.5 That Appendix G to this report be deemed confidential under paragraph 5 of Part 1 of Schedule 12A to the Local Government Act 1972 (legal professional privilege).</p>	



City of Westminster

Cabinet Member Report

Cabinet Member:

Cabinet Member for Finance and Support Services

Date:

1 October 2007

Classification:

For General Release

Title of Report:

New Compensation Policy

Report of:

Director of Organisational Change

Wards involved:

None

Policy context:

Response to Discretionary Compensation Regulations 2006

Financial summary:

The implementation of a new compensation policy will assist the Council in achieving financial objectives in future years

Report Author:

Jon Everard

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3. Background

- 3.1 The Employment Equality Age Regulations 2006 affect staff whose employment was terminated on or after 1 October 2006 and required revisions to aspects of the Council's current Compensation Policies. This was because all compensation payments were calculated and enhanced, on the basis of age in addition to service, in a manner that was not compliant with the exceptions for redundancy contained in that legislation.
- 3.2 There were no such exceptions for age based compensation payments arising from terminations in the interest of efficiency of the service and our schemes would have discriminated against employees on the grounds of their age. The matter was further regulated upon by the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006 (DCR 2006) providing:
- a simplified framework for the payment of compensation;
 - a maximum compensation payment of 104 weeks pay
 - for the requirement to consult and publish a policy outlining the level of payment of any compensation to an employee if their employment is terminated due to redundancy or efficiency of the service
 - that any compensation payment would not be met out of any Local Government Pension Scheme fund
- 3.3 A significant level of lobbying from both employers and unions delayed the passage of the DCR 2006 and the Regulations did not come into force until 29 November 2006.
- 3.4 Transitional provisions in the DCR 2006 enabled the Council to continue to pay compensation under the old policies, if :
1. The employee had commenced employment before 1 October 2006 and where the termination date was after 30 September 2006 and before 1 April 2007; and
 2. The decision to pay compensation was notified prior to 1 October 2006.
- 3.5 However, the DCR 2006 are applicable to all employees whose employment is terminated due to redundancy or efficiency of the service on or after 1 April 2007. Further, the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 (DCR 2000), under which our powers to make compensation payments under our previous policies were to be found, were revoked from that date. It is therefore pressing that a new compensation policy is agreed in accordance with the provisions of the DCR 2006 as the Council is required by law to have a compensation policy. The termination of the employment of staff since 1 April 2007 on the grounds of redundancy and efficiency of the service has therefore given rise to administrative difficulties for the Council.

- 3.6 Under the old policies the Council operated two lump sum compensation schemes and an early retirement scheme. These schemes were formalised by committee in 1997 and 1999 respectively
- 3.7 The relevant lump sum compensation schemes were determined by the date the employee joined the Council whilst the early retirement policy applied where the employee:
- was aged 50 or over; and
 - a member of the Local Government Pension Scheme (LGPS) or Teachers Pension Scheme (TPS).

The lump sum compensation schemes awarded incrementally higher payments to employees who were aged 40 plus. Additionally, those employees in the pension scheme aged 50 or over, retiring early due to redundancy or efficiency of the service, had their service augmented (at significant cost to the departmental budget). Those under 50 did not have their service augmented.

- 3.8 In summary, the compensation benefits awarded under the old policies were:

Early retirement on grounds of redundancy or efficiency of the service

Employees aged 50 and over in the LGPS or the TPS:

- Immediate unreduced payment of their pension and lump sum
- Augmentation of service of up to 10 years (added years); and
- If redundant, a redundancy payment based on actual weeks pay

Termination of employment on grounds of redundancy or efficiency of the service

Employees under age 50 or aged 50 and over and not in the pension scheme;

- If service began after 31 Jan 1997, a lump sum compensation payment of up to 66 weeks pay inclusive of any redundancy payment
- If service began before 1 February 1997, a lump sum compensation payment of up to 84 weeks pay inclusive of any redundancy payment

- 3.9 The main changes or aspects brought by the new legislation are:

- The funding of any future augmentation of service (added years) must be via the pension fund
- Cost of augmented service benefits from the pension fund must be reimbursed by capital payment(s) or variation of employers contribution rate (as assessed by the fund actuary)
- Augmentation of service can be awarded to any scheme member of any age
- The Council now has a discretion to pay higher lump sum compensation payments of up to 104 weeks pay
- There is a removal of the requirement that an employee must have 2 years service to qualify for a compensation payment

- 3.10 The Employers Organisation have issued employers with guidance on the effect of the new Regulations on compensation policies. They have also published variant schemes for devising compensation policies which they believe comply with the new legislation and this guidance has been taken into account in the formulation of the proposed new Compensation Policy attached at Appendix A. Age discrimination is a new area for the UK in equalities legislation and policies are likely to require review as the law itself is developed or comes under challenge.

Formulation of a single new compensation scheme

- 3.11 In most of the variant schemes looked at by the Employer's Organisation and the Council, they consistently used a mixture of the following factors to calculate a compensation payment:

- whole years of service,
- statutory redundancy payment
- use of actual weeks pay and
- a multiplier, generally of between 1 and 3

This ensures that, other than for the statutory redundancy factor which does allow for age related calculation, the employee's age is not considered in calculating the compensation payment which is based wholly on service.

- 3.12 In accordance with the Guidance, a variety of schemes were evaluated, costed and compared to the benefits payable under the old compensation policies. The schemes that were evaluated included schemes:

- continuing to pay - overall - similar levels of benefits
- a statutory redundancy payment (SRP) paid in accordance with the provisions of the Employment Relations Act 1996 and which includes age related calculation exempted by the government (but which may yet be subject to legal challenge, and in any case cannot be used where compensation is paid for efficiency of the service terminations) and
- Paying X number of weeks pay for each year of service.

- 3.13 When comparing the level of compensation payable under the three old schemes against those payable under the schemes of other London Boroughs, it was clear that our schemes were in the upper decile in monetary value. This was because our schemes had not changed in 10 years whilst most boroughs had undergone some revision during that period. It was considered appropriate to benchmark any new policy against those boroughs bordering the Council.

- 3.14 As a result of this benchmarking it is recommended that the Council's new Compensation Policy moves towards a simplified scheme which provides a lump sum compensation payment (inclusive of statutory redundancy payment), calculated on service, regardless of age and pensionable status.

Recommendations

- 3.15 It is therefore proposed that the Council implement a simplified lump sum compensation policy, calculated by multiplying:

$$A \times B \times C$$

where:

- A = whole years of service, and
 - B = 1.5; and
 - C = the employee's actual weeks pay
- 3.16 It is further proposed that, for those employees who are on a weekly pay of less than £310 (or the maximum weeks pay as specified in statute in calculating the SRP) the Council will use its discretion to calculate the Compensation payment using the figure of £310 as weekly pay. This ensures a minimum level of compensation and offers additional protections to those on a lower income from the financial impact of loss of employment.
- 3.17 To ensure the proposed new Compensation Policy remains discretionary the Council will need to retain the flexibility to adjust any award in lieu of personal circumstances. To this end it is recommended that the new policy enable:
- the payment of an Additional Compensation Payment, the amount of which shall not exceed 25% of the total payment (including the SRP), or
 - the reduction of any Initial Compensation Payment by up to 50% (but not below the SRP)

In considering whether to increase or decrease the Initial Compensation Payment the Council may consider the following as reasons for doing so (similar options applied under the old lump sum compensation policy):

- length of Westminster service only
- Education, employment based and professional examinations/qualifications
- Experience
- Performance
- employability
- other employment offers
- any other suitable reason

3.18 Due to the delay in implementing a new policy, some employees, prior to 1 April 2007, within departments undergoing consultation on reorganisation, were provided with estimated compensation and early retirement payments under the old compensation and early retirement schemes. Where these employees have received such an estimate and have:

- been made redundant post 1 April but prior to the implementation of this policy, or
- are currently under notice of redundancy,

it is proposed that further discretion be agreed for the payment of a compensation payment above that in paragraph 3.15, 3.16 and 3.17, the amount of which shall be determined by the Head of HR in conjunction with advice from the Director of Legal Services (but always subject to the maximum of 104 weeks pay). It is further proposed that the policy be applied retrospectively from 1 April 2007 to cover payment of compensation to such staff

3.19 To enable flexibility and tax efficiency for staff, the employee will be given the option to receive either a:

- compensation payment inclusive of the statutory redundancy payment; or,
- a statutory redundancy payment; and an enhancement of pensionable service, limited to the amount by which the compensation payment exceeds the statutory redundancy payment

3.20 To enable an employee to exercise an option under 3.19 the Council will need to revise the policy agreed in 1997 whereby it was determined that there would be no augmentation of service within the pension fund. The revision of the policy (detailed in Appendix F) will enable the payment into the pension fund of that amount of the compensation payment which is greater than the SRP. This change will be cost neutral.

3.21 The proposed scheme, though providing compensation above the SRP, is significantly below the level of our old compensation schemes. A further significant change is that employees retiring early and in the LGPS or TPS will no longer receive automatic augmentation of service. During the consultation period this has proved to be highly contentious to the employee's representatives.

3.22 Of the known published policies of other London Boroughs; 9 will offer a scheme with lower compensation payments than our proposed scheme whilst 16 will offer a scheme with higher compensation payments.

4. Financial Implications

4.1 Attached at Appendix H are a set of calculations which show the compensation benefits which would be received by an employee aged 38 and 50 earning £25K, £50K, £75K and £100K with 10, 20 and 30 years service evaluated against various schemes including the proposed new policy.

- 4.2 The table below shows a comparison of the costs of the 5 evaluated schemes (based on those employees who have been dismissed over the past 7 years due to redundancy or efficiency of the service) against the previous policies and the SRP

These figures do not include any additional compensation that may be awarded in exceptional circumstances under paragraph 3.17. However, if overall the Initial Compensation Payment were increased by an amount not exceeding 25% of the total compensation payment, the increased cost would be nearer to those figures in the table below under '2.0 weeks'.

	Current Policy	SRP	Proposed 1.5 weeks	2.0 weeks	2.5 weeks	3 Weeks scheme
	£7.748M	£1.66M	£2.997M	£3.997M	£4.996M	£5.995M
Savings against the current policy		78.56%	61.31%	48.41%	35.51%	22.61%

- 4.3 Based on the published Business Plan the workforce is expected to reduce by 174.6 FTE over the next three years. Using the same ratio of under and over 50's in the past 7 years who have been made redundant the estimated costs under the 5 evaluated schemes are:

	FTE	Current policy	SRP	Proposed 1.5 weeks	2.0 weeks	2.5 weeks	3 Weeks scheme
Under 50	83.51	£0.864M	£0.434M	£0.651M	£0.868M	£1.085M	£1.302M
50 & over	91.09	£6.534M	£1.609M	£2.528M	£3.371M	£4.214M	£5.057M
Savings against current policy			72.37%	57.03%	42.70%	28.38%	14.05%

- 4.4 The current cost to the general fund of 'added years' awarded to employees under the old early retirement scheme is £3.0 million per annum. As the DCR 2006 no longer allow new compensation pensions to be awarded and payable from the general fund, this amount will in real terms reduce to zero over the next 30 plus years.

5 Consultation

5.1 The Council is required to consult with its workforce and their representatives on all policies as per the Consultation Policy. Because of an anticipated high interest amongst the whole workforce on the change to this policy, the following consultation was undertaken:

- Meetings were undertaken with unions
- A 3 week consultation period was extended to 6 weeks at the request from the unions
- 2 Loop messages were sent to all employees providing links to a 24 page document detailing the proposed changes, reasons for the change, questions and answers sheet and a facility to complete a feedback survey form
- 1 Loop message sent to all Managers with instructions to consult with staff at their respective team meetings
- A hard copy of 24 page document was sent to all employees in the schools area as most were not on Council intranet email

5.2 Despite the significant level of consultation and the facility for each employee to respond anonymously online either positively, critically or just to provide any proposed changes to the policy, the Council has received only 26 responses. Of these, 3 were from the unions. These are attached as Appendix C and have informed the proposals at 3.17 in relation to additional discretion.

Following the end of the consultation period and the collation of the responses received, the Interim Head of HR responded to the Unions in his letter of the 30 July 2007 (attached as Appendix D).

5.3 On 6 August 2007 after closure of the Consultation period, the Union wrote to suggest that changes to the Council's compensation policy are changes to contractual terms and conditions. The Council maintains that the compensation policy is a discretionary policy that may be changed without the agreement of staff, albeit that consultation on the changes has occurred and have informed the proposals herein. See confidential legal advice in Appendix G.

5.4 In response to the Unions letter the Interim Head of HR responded on the 17 August 2007 (attached as Appendix E). A further email by the Interim Head of HR on 12 September 2007 to all recognised trade unions informed that:

"At the TUCG on Monday 10 September, I indicated that the Council's proposals on its new compensation policy were expected to be considered by the relevant Cabinet Member later that day. I am taking this opportunity to confirm that the proposals were considered by the relevant Cabinet Member and subject to receipt of his formal decision, I will write to set out the details of the new policy to the recognised trade unions."

- 5.5 Subject to the agreement of the recommendations in this report, it is anticipated that the trade unions will make formal application of a dispute under the Council Disputes Procedure in respect of this policy (as set out in their responses). This may result in the dispute being considered by the Joint Staffs Committee.

6. Legal Implications

- 6.1 The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006 (DCR 2006) provide for each Authority to authorise payments to staff in excess of any statutory minimums that may apply where their employment is terminated by reason of redundancy, in the interests of the efficient exercise of the Authority's functions or in the case of a joint appointment where the other holder of the appointment has left it. Regulation 5 and 6 make provision for variation as to the minimum sums payable and specify the maximum sums payable by an Authority terminating the employment of staff for one of the specified reasons. In exercising their discretionary powers under those Regulations however, each Authority must formulate, publish and keep under review the policy applied. In formulating and reviewing the policy each Authority must have regard to the extent to which the exercise of their discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service provided and be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.
- 6.2. The proposals put forward for evaluation have been devised in compliance with both the Discretionary Compensation Regulations 2006 and the Employment Equality Age Regulations 2006 to ensure a compensation model that may be used where terminations occur for the specified reasons. It is for members however, to agree the preferred model. The Authority has been unable, without a compensation policy in place, to make compensation payments to staff in excess of the statutory minimum in respect of staff who have been made redundant on or after 1 April 2007. It is necessary therefore, to make provision for the policy to have effect retrospectively.

7. Staffing Implications

- 7.1. Staffing implications centre upon the changes to the discretionary compensation scheme as outlined above. Although the proposed scheme is well above the Statutory Redundancy scheme, it is below the level of the Council's previous scheme.
- 7.2. An extended period of consultation of six weeks was undertaken both with the workforce directly and their representatives, including the provision of a facility to capture views and suggestions via the WIRE. Staff were notified of the proposals via a Loop Message which in turn directed them to a detailed briefing, Q & A sheet and the detailed proposed policy itself.
- 7.3. Detailed responses were received from the workforce directly via the facility on the WIRE referred to above as well as written responses from the Trade Unions.

- 7.4. A summary of the views of employees and their representatives presented through the consultation process is attached as Appendix C. An additional response from UNISON, conveyed after the consultation period had concluded is summarised in point 5.3 above.

8. Business Plan Implications

- 8.1 The proposals in this report seek to ensure that the Council complies with the requirements to publish its policy on compensation and to provide corporate framework for managing organisational changes and staff displacement.

9. Outstanding Issues

- 9.1 The dispute raised by the employee's representatives will require a sitting of the Joint Staffs Committee. Though this Committee has no devolved powers in respect of this policy it is able to make recommendations regarding employee policies.
- 9.2. The Council has communicated to the Trade Unions that it is currently considering proposals for a discretionary compensation scheme and the responses to its extended consultations with staff and trade unions. A decision on such proposals has not yet been finalised and, as such, it is premature to register and consider a formal dispute on a matter that has yet to be determined. Once a decision has been made, and the Trade Unions wish to pursue their formal dispute, a date for the Joint Staffs Committee to consider the matter will be set in accordance with the Council's Disputes Procedure.

10. Ward Member Consultation

- 10.1 This initiative is not ward specific and Ward members have not been separately consulted.

11. Crime and Disorder Act 1998

- 11.1. The exercise of this function is unlikely to impact on crime and disorder in the area

12. Health and Safety Issues

- 10.1 These proposals do not have significant health and safety implications.

13. Reason(s) for Decision(s)

- 13.1 Reasons for the proposed decisions are set out in the report and seek to ensure that the Council complies with the requirements to publish its policy on compensation and to provide corporate framework for managing organisational changes and staff displacement.

If you have any queries about this report or wish to inspect one of the background papers please contact Dennis Roberts, Interim Head of Human Resources on 020 7641 3221, fax 020 7641 3053, email droberts2@westminster.gov.uk.

Appendix A - Policy for compensatory payments

Appendix B – Councils Dispute Procedures

Appendix C - The views of employees and their representatives presented through the consultation process

Appendix D - The reply of the Council to the unions following the consultation period (30 July 2007)

Appendix E - Further reply of the Council to the unions' registration of dispute (17 August 2007)

Appendix F - Revised policy for augmentation of service in the pension fund

Appendix G - Legal Advice (Not for publication: Exempt information under paragraph 5 of Schedule 12A to the Local Government Act 1972 (legal professional privilege)

Appendix H - Calculations to show the compensation benefits which would be received by an employee aged 38 and 50

For completion by Cabinet Member

Declaration of Interest

- I have no interest to declare in respect of this report

Signed Date
NAME: Councillor

- I have to declare an interest

State nature of interest
.....

Signed Date
NAME: Councillor Barrow

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter.)

For the reasons set out above, I agree the recommendation(s) in the report entitled.
New Compensation Policy

Signed

Cabinet Member for Finance and Support Services

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

.....

.....

NOTE: If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Legal and Administrative Services, the Director of Finance and, if there are staffing implications, the Head of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Overview & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Overview and Scrutiny Committee to decide whether it wishes to call the matter in.

Policy for compensatory payments on termination of employment due to redundancy or efficiency of the service on or after 1 April 2007

Summary

Under Regulations 5 and 6 of The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, the Council has the discretion to increase the **Statutory Redundancy Payment (SRP)** payable.

For each complete year of service (subject to a 20 year maximum) an employee who is made redundant is entitled to receive the following SRP

Up to age 21 - a half weeks pay
22 to 40 - one weeks pay
41 and over - one and a half weeks pay

The statutory maximum weeks pay is prescribed and is currently £310

The Council may increase the value of the **SRP** by:

- Using the value of the actual weeks pay (if higher) rather than the statutory maximum weeks pay; and

further, the Council may increase compensation for termination of employment due to redundancy or efficiency of the service beyond the increase in the value of the **SRP** in such manner as it may decide, save that it does not exceed when aggregated with the **SRP**, 104 weeks pay.

Policy

The following gives guidance to the manner in which the Council will exercise its discretion and the manner in which the calculation of discretionary compensation payments will take place subject to the approvals set out:

On an employee being made redundant or leaving the Council due to efficiency of the service, the Council:

- will, at its discretion and on an individual basis, calculate the assessment of the **SRP** by utilising the employee's actual weeks pay where this exceeds the statutory maximum weeks pay (as amended by statute from time to time, usually on an annual basis)
- may, at its discretion apply a minimum level of the statutory maximum weeks pay for all assessments of **SRP** made under this policy even where the employees actual weeks pay would be **less** than the statutory maximum.
- may, at its discretion and on an individual basis pay to an employee covered by this policy a further **discretionary compensation payment** not exceeding 104 weeks pay inclusive of the **SRP** referred to at the first bullet point above.

The amount of any **Initial Compensation Payment** will be calculated with reference to the employees aggregated service (as determined for the calculation of the **SRP** but not limited to 20 years service).

The **Initial Compensation Payment** will be calculated as follows:

- (A) aggregated service (as determined for the calculation of the **SRP**)
- (B) weeks pay (actual or statutory maximum as appropriate)
- (C) multiplying factor of 1.5

$$(A) \times (B) \times (C) = \text{Initial Compensation Payment}$$

The Council may at its discretion also enable:

- the payment of an **Additional Compensation Payment**, the amount of which shall not exceed 25% of the total payment (including the **SRP**), or
- the reduction of any **Initial Compensation Payment** by upto 50% (but not below the **SRP**)

In considering whether to increase or decrease the **Initial Compensation Payment** the Council may consider the following as reasons for doing so:

- length of Westminster service only
- Education, employment based and professional examinations / qualifications
- Experience
- Performance
- employability
- other employment offers
- any other suitable reason

Any compensation payment above the **SRP** only to be made subject to the agreement and discretion of the Head of Human Resources and/or the Director of Finance and shall not exceed the overall maximum of 104 weeks pay including such sum as may be calculated for **SRP**

Any payment is subject to the post having been agreed as redundant by way of such reorganisation report as is appropriate under the Constitution and any necessary approvals for a termination under efficiency of the service having been obtained.

The Council may make such further **Additional Compensation Payment** as may be agreed by the Head of Human Resources (subject to financial constraints and legal advice) to be paid to staff under notice of redundancy at the time of the agreement of this policy or where redundancy has been effected after 1 April 2007 but prior to the agreement of this policy

Where the employee is aged 64 or over, the amount of any **SRP** and discretionary compensation payment will be limited to the number of weeks pay from the date of redundancy to their 65th birthday.

Where the employee is an active member of the Local Government Pension Scheme (LGPS), the Council may exercise its discretion to:

- allow the employee to elect to compound the amount by which any compensation payment exceeds the **SRP** (calculated using actual weeks pay or the statutory maximum weeks pay if lower) into an equal value of pensionable service calculated by the funds actuary under Regulation 52 of the LGPS.
- This sum shall be known as the compounded value. The amount of service purchased with the compounded value calculated as set out above shall not exceed the maximum permitted under Regulation 52 of the LGPS or such other applicable Regulatory provision.

Where the 'compounded value' provides for service in excess of the permitted maximum under Regulation 52 the employee will not be entitled to any other compensation payment in lieu of the permitted maximum.

The Council will further use its discretion to make a compensation payment to an employee under this policy subject to the employee having a minimum of one complete year of service.

Any employee, who on being given notice of redundancy, and whose employment is terminated by reason of redundancy, or leaves due to efficiency of the service, may elect in writing prior to their final day of scheme membership, to receive either:

- 1 Payment of a single lump sum discretionary compensation payment;
- or,**
- 2 Subject to the employee being an active member of the LGPS;
 - (a) Payment of a **SRP** (calculated using a weeks pay no higher than the maximum value under the ERA); and
 - (b) Elect to compound that amount ('compounded value') by which any discretionary compensation payment exceeds the **SRP** (calculated using a weeks pay no higher than the statutory maximum) into an equal value of pensionable service as calculated by the funds actuary under Regulation 52 of the LGPS subject to any maximum permitted.

Any decision must be **made in writing**, by the employee, before their last day of active membership of the pension fund, otherwise, this part of the policy is not applicable.

This policy, in its entirety, is subject to review within two years of approval to ensure that the Council's objectives continue to be met.

Council's Disputes Procedure

When agreement cannot be reached by management and trade union representatives at a local level, the following procedure should be used:

- The appropriate trade union representative and/or manager should approach the Head of HR for advice. Where possible, a reply should be given within five working days.
- Where the above does not resolve the issue, a meeting should be convened between the Chief Officer, the Branch Secretary and the Head of HR (or their respective nominees) and any other relevant persons as mutually agreed. This should take place, where possible, within one working week of the request.
- Where no solution can be found at this meeting, either party may refer the matter to the Joint Staff Committee. The Joint Staff Committee will be called within 10 working days of a request unless there are circumstances which mean that a longer period is acceptable. A request from either side should contain the detail of the dispute and the reasons why it had not been possible to agree a mutually acceptable solution. The notice summoning the meeting shall be dispatched not less than 5 working days beforehand. This shall include an agenda with written submissions provided by both Staff Side and Management.
- If agreement still cannot be reached, the appeals procedure as laid down in the relevant National Terms and Conditions will apply.

To Trade Unions' Members of TUCG

30 July 2007

Dear Colleagues

Proposed Changes to the Council's Compensation Policy

I am responding to the email message (today) from Rahul on behalf of GMB, NUT and UNISON regarding the proposed changes to the Council's compensation scheme.

I have noted that the trade unions accept the Council's position, although you have registered your disappointment at the response to your comments on the proposed changes to the Council's redundancy and severance scheme.

You will recall that my previous letter confirmed that the trade unions were asked to communicate any legal advice on the proposed changes to the compensation policy, where this differed from the approach being adopted by the Council. To date, no such response has been received. However, I note that your letter now indicates that you regard the Council's previous compensation scheme as contractual. Can you please comply with the Council's previous request to provide your justification for your views and, in particular, your claim that the Council's previous compensation scheme was contractual.

Your letter confirms that the trade unions regard themselves as being in formal dispute on this matter and are now formally requesting that this dispute be referred to the Joints Staff Committee. To enable this, can you please provide a statement of the terms of the dispute, together with the supporting information previously requested by the Council.

The Council has yet to formally decide on the terms of its new compensation policy and it would be premature to initiate for the trade unions to regard themselves as being in formal dispute on this matter.

I look forward to receiving the further information previously requested on behalf of the Council and, in the meantime, I hope this response clarifies the Council's position on the issues raised by the trade unions.

Yours sincerely

Dennis Roberts
Interim Head of Human Resources

PRIVATE & CONFIDENTIAL

Phil Vaughan
Assistant Branch Secretary
UNISON
Westminster City Hall
1st Floor, 64 Victoria Street
London SW1E 6QP

17 August 2007

Dear Phil

Proposed Changes to the Council's Compensation Policy

I have responded previously to the points made on behalf of the GMB, NUT and UNISON regarding the proposed changes to the Council's compensation scheme.

I am grateful to you for clarifying that the trade unions do not contend that the Council's previous compensation scheme was a collective agreement. For its part, the Council maintains that its compensations schemes are discretionary and it contends that its approach in this matter does not constitute a unilateral variation of contract, as described in your letter.

I have noted that the report to the Finance and Support Services Committee on 21 June 1999 included reference to the trade unions being consulted on the content on proposals for the introduction of its proposals for a discretionary compensation scheme. This reflects the Council's practice in respect of its recent consultations in respect of its proposed discretionary compensation scheme. Indeed, as you are aware, the Council extended the consultation period on this occasion to provide a greater opportunity for the trade unions to consult their members, although the Council has noted that the trade unions did not use this extended period to consult all their Westminster City Council members.

As you know, compliance with the age legislation prevented the continuation of the previous compensation scheme and, pending a decision on the terms of a new scheme, the Council is obliged to operate the statutory redundancy scheme. As such, your dispute appears to be a challenge to the Council's compliance with anti-discrimination laws.

A decision on its compensation proposals has not yet been finalised and, as such, it is premature to register and consider a formal dispute on a matter that has yet to be determined. Once a decision has been made, and the Trade Unions can confirm their wish to pursue a date for a formal dispute to be considered by the Joint Staffs Committee, in accordance with the Council's Disputes Procedure.

Yours sincerely

Dennis Roberts
Interim Head of Human Resources

Policy for augmentation of service under Regulation 52 of the Local Government Pension Scheme Regulations 1997 (LGPS) on or after 1st April 2007

Summary

Under Regulation 52 of the LGPS an employer has the discretion to augment service to an employee during their employment. The maximum augmented service shall not exceed 10 years.

Any employer who exercises such a discretion must pay within one month of that discretion, or such longer period that the Administering Authority shall determine, the actuarial cost of the augmented service into the Pension Fund.

Policy decision

The following are the criteria for this policy:

Personal Criteria

Any employee, who on being given notice of redundancy and whose employment is terminated due to redundancy, or is retired due to efficiency of the service, maybe eligible to receive a compensation payment under the Councils Compensation Policy.

An employee who is a member of the LGPS can elect to compound that value of any Compensation Payment that exceeds the statutory redundancy payment, to provide augmented service (as calculated by the fund actuary) under Regulation 52 of the LGPS.

Any decision must be made in writing, by the employee, before their last day of active membership of the pension fund, otherwise, this policy is not applicable.

Any compounded value, in excess of the statutory redundancy payment, cannot purchase service in excess of the maximum augmented service allowable.

Business Needs Criteria

In lieu of the payment of any compensation payment which exceeds the statutory redundancy payment, on receipt of an election from an employee before their last day of scheme membership with the Council, the Council shall augment service under Regulation 52, as calculated by the fund actuary. Such augmented service will not exceed the maximum permitted.

The pension fund will be reimbursed the cost of the augmented service from the Departmental Budget within the tax year of the election being applied.

WESTMINSTER CITY COUNCIL

STATEMENT OF DECISION

SUBJECT: New Compensation Policy

Notice is hereby given that Councillor Colin Barrow, Cabinet Member for Finance and Support Services, has made the following executive decision on the above mentioned subject for the reason set out below.

Summary of Decision:

1. That the Cabinet Member note the following:
 - the views of employees and their representatives presented through the consultation process (Appendix C);
 - the replies sent to the unions following the consultation period (Appendices D and E);
 - the arrangements for the reference under the disputes procedure to the Joint Staff Committee (Appendix D);
2. That the implementation of a single new Compensation Policy as detailed in Appendix A be approved.
3. That, subject to the approval of 2.2 above, the revised policy detailed in Appendix F for augmentation of service in the pension fund be approved.
4. That the compensation policy be reviewed within two years of operation to ensure that it continues to meet the Council's objectives.
5. That Appendix G to the report be deemed confidential under paragraph 5 of Part 1 of Schedule 12A to the Local Government Act 1972 (legal professional privilege).

Reason for Decision:

The proposals will ensure that the Council complies with the requirements to publish its policy on compensation and will also provide a corporate framework for managing organisational changes and staff displacement.

C.T Wilson
Director of Legal and Administrative Services
Westminster City Hall
64 Victoria Street LONDON SW1E 6QP

Publication Date: 12 October 2007
Decision Ref: No. CMfF&SS/56/2007