

COUNCIL

17 FEBRUARY 2016

INDEPENDENT ADVISER'S REPORT

SECTION A – MATTER FOR DECISION

WARDS AFFECTED - ALL

PROPOSALS FOR AN EARLY RETIREMENT.VOLUNTARY REDUNDANCY. COMPULSORY REDUNDANCY (ER.VR.CR) SCHEME FOR THE CHIEF EXECUTIVE AND CHIEF OFFICERS

1. Purpose of report

- 1.1 The purpose of this report is for Members to consider five options for an ER.VR.CR Scheme for the Chief Executive and Chief Officers and to make a decision regarding which Scheme to introduce.

2. Background information

- 2.1 In a report to Personnel Committee on 8th September 2014, reviewing the Council's ER.VR.CR Scheme, it was proposed that ER.VR.CR provisions for the Chief Executive and Chief Officers should be reviewed separately, at a later date, and in a manner to be determined which ensures that no personal interest issues arise. In the meantime, Members were asked to note that there is no ER.VR.CR Scheme in place for this group of officers other than minimum statutory provisions.
- 2.2 In the light of the ongoing financial challenges facing the Council, any Scheme introduced should provide good value for money to the Council. This should also be balanced with ensuring that the Council remains an attractive place to work in a competitive market place for senior officers, safe in the knowledge that should they be in a redundancy situation, their redundancy payment would be at an appropriate level.
- 2.3 Each Council has the flexibility to set its own scheme based on its requirements and circumstances. When carrying out research into developing an ER.VR.CR Scheme for the Chief

Executive and Chief Officers, account has been taken of the Schemes operating in other Welsh Local Authorities to ensure that the Scheme being proposed is broadly comparable. The most prevalent Scheme which is operating in 10 local authorities, is a 45 week scheme based on actual pay. The Schemes apply to both Chief Officer and Green Book employees.

- 2.4 By law, employees are entitled to be paid a statutory redundancy payment where an employee has been continuously employed for a 2 year qualifying period and are dismissed by reason of redundancy (voluntary or compulsory), and where they have not unreasonably refused alternative employment.
- 2.5 An employer can pay a greater amount than the statutory redundancy payment. However, to ensure that there is no age discrimination, any additional payments must be carefully constructed. Permitted enhancements may include setting aside or increasing the value of the current statutory cap on a week's pay, for example, by using actual rates of pay. Other permissible enhancements may include paying a multiple of the total statutory calculation or increasing multipliers.
- 2.6 The statutory redundancy pay employees are entitled to consists of the following:-
- 0.5 week's pay for each full year of service while they were under 22
 - 1 week's pay for each full year of service while they were 22 or older, but under 41
 - 1.5 week's pay for each full year of service while they were 41 or older.

Employees can only count a maximum of 20 years' service and the 'weekly pay' is subject to an upper limit.

The Statutory Redundancy Table is attached as **Appendix A**. To use this table, firstly look up the employee's age and number of years' continuous service with the Council (& its predecessor authorities). Where the two intersect on the table, this is the number of weeks' pay which becomes payable.

The statutory redundancy payment is capped at £475 a week.

2.7 The three key variables which need to be considered when developing an ER.VR.CR Scheme are:-

- a) The multiplier used against the statutory scheme which determines the number of weeks to be used in the calculator which produces a maximum number of weeks;
- b) The definition of a weeks' pay for the calculation of the redundancy payment
- c) The inclusion of a discretionary redundancy payment

2.8 In relation to (a) a number of options are explored (see section 6 of this report) in relation to the multiplier which then equates to a number of weeks used in the calculation of the redundancy payment

2.9 As regards (b) the Council can either operate this as "actual" pay where actual pay does not exceed £475 per week. Or align this weekly pay figure to the £475 per week (the limit of a week's pay as defined for calculating statutory redundancy pay) which is the figure in the statutory redundancy legislation which is increased annually by the Department for Business Innovation and Skills. Maintaining this link will ensure that costs of redundancies can be budgeted for as the weekly pay cannot exceed this figure.

2.10 In relation to (c), the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 allow the Council to pay discretionary compensation which is additional to a statutory redundancy payment. Under the Regulations the Council must formulate, publish and keep under review the policy that it applies in the exercise of its discretionary power. If the Council decides to change its policy it must publish a statement of the amended policy and may not give effect to any policy change until one month after the date of publication. Although enhanced payments are discretionary and not contractual, adequate consultation on changes in policy should be carried out with relevant trade unions.

3. **Section 40 of the Localism Act 2011**

3.1 In statutory guidance issued under Section 40 of the Localism Act 2011 (amended February 2014), the Welsh Government recommends that full Council approve large severance packages

over £100,000. The Guidance aims to provide openness and transparency in relation to Chief Executive and Chief Officer severance packages above £100,000.

3.2 Within the Guidance, the definition of the elements which make up the £100,000 and above include:-

- Salary paid in lieu of notice
- Lump sum redundancy payment
- Cost to the authority of any pension enhancement or strain on the pension fund (in line with LGPS Regulations)

3.3 The five options for an ER.VR.CR Scheme for the Chief Executive and Chief Officers contained within this report would mean that even when a severance package amounts to £100,000 or more, the amount of the actual redundancy payment received by the employee is a relatively small part of the whole package. It is the cost of the strain on the pension fund that would form the largest part of the package.

3.4 The strain on the pension fund is a payment which is included in the definition of Severance Package for employees aged 55 or over at their leaving date. It is not paid to the employee, but from the Council into the overall pension fund itself. The Council has no discretion over this cost, the amount paid is determined by the Local Government Pension Scheme Regulations.

3.5 Employees under the age of 55 are not eligible under LGPS Regulations to access their pension fund early.

4. **UK Government Consultation on Local Government Exit Payments**

4.1 The UK Government has published the draft Public Sector Exit Payment Regulations 2016 which will impose a cap of £95,000 on exit payments for public sector workers. The Regulations will be made under a new section in the Small Business, Enterprise and Employment Act 2015 to be inserted into the Enterprise Bill, which was introduced to the House of Lords on 16th September 2015.

Included in the £95,000 cap is:-

- Salary paid in lieu of notice
- Lump sum redundancy payment
- Cost to the authority of any pension enhancement or strain on the pension fund (in line with LGPS Regulations)

Once the Enterprise Bill comes into force and is applied in Wales, each of the five options provided below may be subject to the £95,000 cap. The ER.VR.CR Scheme introduced for the Chief Executive and Chief Officers will have to be updated, as appropriate, to take this into account.

4.2 **Recovery Provisions**

The UK Government has issued draft Regulations concerning the recovery of exit payments made to employees who leave the public sector and return within 12 months. The minimum salary to which the recovery provisions will apply is £80,000 per annum. Should the UK Government introduce these Regulations, the ER.VR.CR Scheme introduced for the Chief Executive and Chief Officers will be updated, as appropriate, to take this into account.

5. **Business Case**

A Business Case must be completed in relation to any ER.VR.CR application for the Chief Executive and Chief Officers to ensure that the criteria of the Scheme is met and for financial probity.

6. **Proposals for an ER.VR.CR Scheme for the Chief Executive and Chief Officers**

6.1 **Option One**

This proposal mirrors this Council's ER.VR.CR Scheme for Local Government Services (Green Book) employees which has been negotiated with the trade unions and in operation since 1st April 2015. It is proposed that the Scheme is amended to include the Chief Executive and Chief Officers in its scope.

Subject to the total cost to the Council of **early release of pension and/or severance payment** being limited to the equivalent of 52 weeks' pay for the employee concerned, the

following provisions will apply in cases of Voluntary Redundancy (VR) and Compulsory Redundancy (CR):

early release of pension for “qualifying” employees;

lump sum **statutory redundancy payment**, using the 30 week Statutory Redundancy table (weekly pay capped at £475)

lump sum **Discretionary Compensation payment**, using the Council’s **50 week** table, (weekly pay is actual pay, reduced by the statutory redundancy payment referred to above). Multiplier of 1.66 x statutory redundancy table.

Where total cost of early access to pension and the cost of statutory redundancy payments equates to more than 52 weeks pay – the payback period can be extended **“up to 104 weeks” - but subject to only early access to pension, plus statutory redundancy pay, being applicable** (i.e. no discretionary severance payment)

6.2 Option Two

The following provisions will apply in cases of Voluntary Redundancy (VR) and Compulsory Redundancy (CR):

early release of pension for “qualifying” employees;

lump sum **statutory redundancy payment**, using the 30 week Statutory Redundancy table (weekly pay capped at £475). This statutory redundancy payment **capped at £14,250**.

lump sum **Discretionary Compensation payment**, using the Council’s **50 week** table (multiplier of 1.66*) **capped at the maximum amount applicable to a Grade 13 Local Government Services (Green Book) employee, reduced by the statutory redundancy payment above.**

The maximum redundancy payment for this option will vary depending on age and length of service, but would not exceed the amount received by a Grade 13 Local Government Services (Green Book) employee, regardless of salary, please see example below:-

Age: 61
Grade: 13 (scp52)
Salary: £45,923 per annum (£880.72 weekly pay)
Length of service: 20+ years

Statutory Redundancy Payment = £14,250

Discretionary Compensation Payment = £29,786

Total Redundancy Payment £44,036

6.3 Option Three

Subject to the total cost to the Council of **early release of pension and/or severance payment** being limited to the equivalent of **52 weeks' pay** for the employee concerned, the following provisions will apply in cases of Voluntary Redundancy (VR) and Compulsory Redundancy (CR):

early release of pension for “qualifying” employees;

lump sum **statutory redundancy payment**, using the 30 week Statutory Redundancy table (weekly pay capped at £475)

lump sum **Discretionary Compensation payment**, using a **45 week** table, (weekly pay is actual pay, reduced by the statutory redundancy payment referred to above). Multiplier of 1.45 x statutory redundancy table.

Where total cost of early access to pension and the cost of statutory redundancy payments equates to more than 52 weeks pay – ***the payback period can be extended “up to 104 weeks” - but subject to only early access to pension plus statutory redundancy pay being applicable*** (i.e. no discretionary severance payment).

6.4 Option Four

Subject to the total cost to the Council of **early release of pension and/or severance payment** being limited to the equivalent of **52 weeks' pay** for the employee concerned, the following provisions will apply in cases of Voluntary Redundancy (VR) and Compulsory Redundancy (CR):

early release of pension for “qualifying” employees;

lump sum **statutory redundancy payment**, using the 30 week Statutory Redundancy table (weekly pay capped at £475)

lump sum **Discretionary Compensation payment**, using a **40 week** table, (weekly pay is actual pay, reduced by the statutory redundancy payment referred to above). Multiplier of 1.33 x statutory redundancy table.

Where total cost of early access to pension and the cost of statutory redundancy payments equates to more than 52 weeks pay – ***the payback period can be extended “up to 104 weeks” - but subject to only early access to pension plus statutory redundancy pay being applicable*** (i.e. no discretionary severance payment).

6.5 **Option Five**

The following provisions will apply in cases of Voluntary Redundancy (VR) and Compulsory Redundancy (CR):

early release of pension for “qualifying” employees;

lump sum **statutory redundancy payment**, using the 30 week Statutory Redundancy table (weekly pay capped at £475).

With this proposal, the maximum statutory redundancy payment received would be £14,250.

There would be no discretionary compensation payment in this option, so the maximum received would be the **£14,250**.

Note:

- 6.6 In Options One to Five above, the statutory redundancy payment is based on a weekly amount of £475. This amount is increased annually by the Department for Business Innovation and Skills (DfBIS) so this amount will be amended in line with the increase, when applicable and the relevant statutory redundancy cap amended.

6.7 “**Qualifying**” employees in respect of early release of pension generally means aged 55 years, or over, with 3 months’ membership of the Local Government Pension Scheme (LGPS). The definition of “qualifying” is covered by LGPS Regulations and may change as a result of future legislative changes.

7. **Early Retirement**

Applications for Early Retirement (ER) will be granted on the basis of “in the interests of efficiency of the service”. All such ER decisions will be subject to a robust business case being approved.

The following provision applies in cases of ER:-

Subject to **the total cost to the Council of early release of pension being limited to the equivalent of up to 104 weeks’ pay**, the following will apply in cases of Early Retirement (ER):

- early release of pension for “qualifying” employees

There will be no redundancy payment made under the Early Retirement Scheme.

8. **Compulsory Redundancy**

It is the Council’s policy to prevent compulsory redundancies from arising if at all possible. However, where unavoidable, the process to be followed for Chief Officers will be in line with the JNC for Chief Executives of Local Authorities Conditions of Service (for the Chief Executive) and the JNC for Chief Officers of Local Authorities Conditions of Service (for Chief Officers).

In the case of Compulsory Redundancy, there will be no requirement for the redundancy payments / early access costs to meet a payback period, as provided for in Options One to Four.

However the £95,000 cap (as detailed in paragraph 4.1) would apply for all the Options.

9. **Summary**

The ER.VR.CR Scheme for the Chief Executive and Chief Officers will incorporate the terms detailed below subject to the Option agreed by Members:-

- Statutory Redundancy Payment (based on statutory redundancy legislation - currently £475 per week)
- Discretionary Compensation payment (where applicable) based on actual pay, as per the following:-
 - 50 week table – Option 1
 - Capped at that of a Grade 13 Green Book employee – Option 2
 - 45 week table – Option 3
 - 40 week table – Option 4
 - No discretionary compensation payment – Option 5
- Access to pension costs (for qualifying employees) subject to any intervention by the UK Government (see 4.1 above)
- Approved Business Case (signed off by Full Council if over £100,000)
- Early retirement provision as per paragraph 7
- Compulsory redundancy provision as paragraph 8
- Note the provisions in the draft Public Sector Exit Payment Regulations 2016 (£95,000 cap)
- Note the draft Regulations concerning the recovery of exit payments (the minimum salary to which these provisions apply is £80,000 p.a.)

10. **Consultation**

10.1 Consultation has taken place with recognised Trade Unions representing the Chief Executive and Chief Officers. The outcome of this Consultation process is provided below.

10.2 There were three responses to the consultation. All three responses stated that **Option 1** would be their preferred option.

One response stated that although Option 1 was their preferred option, any option except Option 5 would be acceptable. The response also commented on their concerns on how unattractive senior jobs in the public sector / local government are going to be in the future based on the UK Government's changes in taxation and pension rules and proposed legislation to restrict and repay redundancies packages. Combined with this is the

difficulty the Council has had previously to attract candidates to some of our senior posts.

Another response wanted parity with the Green Book Scheme.

The third response favoured Option 1.

11. **Potential personal or pecuniary interests on the part of Senior NPT Council Officers**

11.1 Wales Audit Office Guidance states:

“Where an officer has a pecuniary and personal interest in a matter they should not participate in the decision making process by providing advice, including by being author (or joint author) of a relevant report, and / or by attending a relevant meeting and all the more by providing advice at a relevant meeting”.

11.2 Clearly matters of an ER.VR.CR Scheme for the Chief Executive and Chief Officers is one in which those officers have a personal and pecuniary interest, and they are therefore debarred from supporting the decision making process as outlined above. The Wales Audit Office has suggested that these difficulties can be overcome by the Council commissioning independent advice from a suitably qualified external adviser. The Leader of the Council has subsequently asked me to provide such independent advice to Council at this meeting, hence this report to Members today.

11.3 I have been provided with factual information about the proposals for an ER.VR.CR Scheme for the Chief Executive and Chief Officers. I have been informed that it is permissible for relevant senior officers to provide any factual information which might be required, arising from any issues which might be raised by Members at the meeting. The Council’s Principal Human Resources Manager will be in attendance at the meeting and the Director of Finance & Corporate Services and / or Head of Human Resources will also, therefore, be available, outside of the meeting, to provide me with any such factual information, if requested by Members.

12. Independent Advice

I have reviewed the five options and other proposals in relation to an ER.VR.CR Scheme for the Chief Executive and Chief Officers and I am satisfied that the options in this report offer Members sound proposals in order to make a decision on the provisions of an ER.VR.Scheme for the Chief Executive and Chief Officers.

13. Recommendation

13.1 It is **RECOMMENDED** that Members:

(a) Consider the five options for a revised ER.VR.CR Scheme for the Chief Executive and Chief Officers and **APPROVE** one of the proposals as set out in the report.

(b) Consider the provision for Early Retirement and **APPROVE** this provision.

(c) Consider the provision for Compulsory Redundancy and **APPROVE** this provision.

(d) Should the statutory redundancy weekly amount change then that will automatically be applied within this scheme.

FOR DECISION

14. Officer Contact

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15. Background Papers

- Localism Act 2011
- Recovery of Public Sector Exit Payments – Government's response to the Consultation

16. **Appendices**

Appendix A – Statutory Redundancy Table

Appendix A

STATUTORY REDUNDANCY TABLE

Aa	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
17	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
18	1	1½	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
19	1	1½	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
20	1	1½	2	2½	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
21	1	1½	2	2½	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22	1	1½	2	2½	3	3½	-	-	-	-	-	-	-	-	-	-	-	-	-
23	1½	2	2½	3	3½	4	4½	-	-	-	-	-	-	-	-	-	-	-	-
24	2	2½	3	3½	4	4½	5	5½	-	-	-	-	-	-	-	-	-	-	-
25	2	3	3½	4	4½	5	5½	6	6½	-	-	-	-	-	-	-	-	-	-
26	2	3	4	4½	5	5½	6	6½	7	7½	-	-	-	-	-	-	-	-	-
27	2	3	4	5	5½	6	6½	7	7½	8	8½	-	-	-	-	-	-	-	-
28	2	3	4	5	6	6½	7	7½	8	8½	9	9½	-	-	-	-	-	-	-
29	2	3	4	5	6	7	7½	8	8½	9	9½	10	10	-	-	-	-	-	-
30	2	3	4	5	6	7	8	8½	9	9½	10	10	11	11	-	-	-	-	-
31	2	3	4	5	6	7	8	9	9½	10	10	11	11	12	12	-	-	-	-
32	2	3	4	5	6	7	8	9	10	10	11	11	12	12	13	13	-	-	-
33	2	3	4	5	6	7	8	9	10	11	11	12	12	13	13	14	14	-	-
34	2	3	4	5	6	7	8	9	10	11	12	12	13	13	14	14	15	15	-
35	2	3	4	5	6	7	8	9	10	11	12	13	13	14	14	15	15	16	16
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14	15	15	16	16	17
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15	16	16	17	17
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16	17	17	18
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17	18	18
40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18	19
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19
42	2½	3½	4½	5½	6½	7½	8½	9½	10	11	12	13	14	15	16	17	18	19	20
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
44	3	4½	5½	6½	7½	8½	9½	10	11	12	13	14	15	16	17	18	19	20	21
45	3	4½	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
46	3	4½	6	7½	8½	9½	10	11	12	13	14	15	16	17	18	19	20	21	22
47	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
48	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
49	3	4½	6	7½	9	10	12	13	14	15	16	17	18	19	20	21	22	23	24
50	3	4½	6	7½	9	10	12	13	14	15	16	17	18	19	20	21	22	23	24
51	3	4½	6	7½	9	10	12	13	15	16	17	18	19	20	21	22	23	24	25
52	3	4½	6	7½	9	10	12	13	15	16	17	18	19	20	21	22	23	24	25
53	3	4½	6	7½	9	10	12	13	15	16	18	19	20	21	22	23	24	25	26
54	3	4½	6	7½	9	10	12	13	15	16	18	19	20	21	22	23	24	25	26
55	3	4½	6	7½	9	10	12	13	15	16	18	19	21	22	23	24	25	26	27
56	3	4½	6	7½	9	10	12	13	15	16	18	19	21	22	23	24	25	26	27
57	3	4½	6	7½	9	10	12	13	15	16	18	19	21	22	24	25	26	27	28
58	3	4½	6	7½	9	10	12	13	15	16	18	19	21	22	24	25	26	27	28
59	3	4½	6	7½	9	10	12	13	15	16	18	19	21	22	24	25	27	28	29
60	3	4½	6	7½	9	10	12	13	15	16	18	19	21	22	24	25	27	28	29
61	3	4½	6	7½	9	10	12	13	15	16	18	19	21	22	24	25	27	28	30

