DELEGATED ITEM

Review of the Redundancy Payments and the Efficiency Release Payment schemes.

Report of the Head of People Services

2nd October 2012

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Purpose of Report

To seek approval to the proposed changes to the scheme of payments made to non-teaching employees in the event of redundancy or efficiency release.

Recommendations

It is recommended that the revised scheme for non-teaching employees be approved effective from the date of issue of the 2013/14 budget Section 188 notice.
1.0 Introduction

1.1 The current arrangements for both voluntary and compulsory redundancy and efficiency release were introduced in April 2007. The redundancy scheme is more generous than the statutory redundancy scheme.

1.2 The council has a statutory obligation to keep under review any redundancy and efficiency release policy to ensure it is workable, affordable and reasonable having regard to the foreseeable costs.

1.3 In recent years the council has sought annually to “capitalise” redundancy costs. However the regulations only allow the capitalisation of ‘statutory redundancy payments’. This has meant that the Council has not been able to capitalise substantial amounts of redundancy expenditure and has had to fund these from revenue budgets, resulting in additional immediate financial pressures and potentially more job losses. Efficiency payments cannot be capitalised.

1.4 The council is again facing significant budget reductions both in 2012/13 and the foreseeable future; this will inevitably lead to further job losses.

1.5 A survey of AGMA Authorities in October 2011 showed that Oldham’s scheme was the most generous scheme operated consistently within AGMA with the majority of councils calculating entitlement to redundancy based on the statutory scheme with the payment based on actual pay.

1.6 For the reasons above it was considered that the schemes should be reviewed with a view to reaching agreement with the trades unions on any proposed changes.

2.0 Background

2.1 The Statutory redundancy payment rights are set out in the Employment Rights Act 1996 and is calculated on a maximum of 30 weeks pay (20 years service multiplied by 1.5 weeks) and is capped at a maximum week’s pay figure of, currently, £430 per week. Local Government Employers have the discretion to calculate the payment based on the employee’s actual weeks pay.

2.2 The council operates 2 redundancy payment schemes, one for teachers and one for non-teaching staff. The amounts payable are the same regardless of whether the redundancy is voluntary or compulsory. The schemes are based on enhancing the statutory redundancy weeks paid to all employees by a multiplier of 2.0 (teachers) and 2.5 (non teachers) to a maximum of 60 and 52 weeks respectively. Payment is based on an actual weeks pay i.e. there is no
£430 per week cap as in the statutory scheme for those employees who earn above this amount.

2.3 The efficiency release scheme is appropriate where there is a service re-organisation or other business reason, which supports the release of an employee in circumstances where their post will not necessarily be deleted and as such redundancy will not be applicable. In this event employees receive 1 week's pay for every year of continuous service with Oldham Council subject to a minimum of 12 weeks.

In both cases pension is paid in line with the scheme rules and is not augmented to give added years to pension membership.

2.4 The current schemes have been successful in attracting a high number of volunteers, which has in turn minimised the number of compulsory redundancies. This has reduced the time and risk associated with redundancy programmes.

2.5 In addition it was intended that any scheme review be applied equally to both the teaching and non-teaching schemes as it was considered that any difference between the schemes which is more generous to one group could not be justified.

2.6 The review of the scheme considered that the existing scheme is no longer appropriate or affordable in light of the continuing budget deficit faced by the council.

2.7 This resulted in proposals to amend the redundancy payments calculation to be based on the statutory number of weeks as now but to no longer apply the multiplier. A week's pay would continue to be based on actual pay.

In terms of efficiency it was proposed that the payment be based on actual service and that the minimum 12 weeks payment be removed.

2.8 The council commenced consultation with the trades unions in August 2011 on the above proposals. Consultation ended in October 2011 due to the commencement on the 12/13 budget process without agreement being reached.

3.0 Contractual position

3.1 The unions stated their belief that the existing scheme is contractual and that as such the council is not in a position to unilaterally enforce a new policy without either reaching a collective agreement or seeking to terminate and re-engage employee contracts.

3.2 The council has sought Counsel's advice as to the legal and contractual positions of the redundancy schemes.
The key points are:

(i) **Non Teaching staff**

There is a statutory obligation to keep under review the policy applied in the exercise of discretionary powers.

In addition Regulation 7 of the 2006 Discretionary Payments Regulations dictates that in reviewing the policy the authority must:
(a) Have regard to the extent to which the exercise of their discretionary powers (in accordance with the policy), unless properly limited, could lead to a serious loss of confidence in the public service; and
(b) Be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs

As part of the Council's review a key driver was affordability. In the context of a budget deficit of some £24m in 2012/13 and a further £30m by 2015, it is considered appropriate to review the scheme in light of its cost.

**Contractual status**

Employees have a contractual right to receive a redundancy payment in accordance with the discretionary arrangements within the published policy; we are in turn obliged to review our policy (as above). In the event that the policy changes, the contractual right remains unchanged i.e. to receive a redundancy payment but any payment will now be made in line with the new published policy.

**Implementation**

In addition there is a requirement to publish the amended policy and that we may not give effect to any change until one month after publication. Therefore no payments under the new scheme can be made until after this period of one month.

(ii) **Teachers**

The position as far as teachers are concerned is different. The Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 do not contain the equivalent of Reg 7 i.e. the statutory obligation to review the scheme, and as such the contractual right is to the discretionary payment detailed in the scheme. Therefore should this change without following due process of collective agreement or termination and re-engagement of employee contracts; this would potentially be a breach of contract.

As such we must undertake a separate process to change the redundancy and efficiency schemes for teaching staff and that this will result in different timescales being applied and a potential for a different outcome.

4. **Current situation**

4.1 As a result of the earlier consultation the council revised its position and re-commenced consultation in May 2012 with an improved offer that the scheme
be changed to a reflect a multiplier of 1.5 times the statutory redundancy weeks subject to a maximum of 30 weeks gross pay for both Teaching and Non-Teaching staff. A week’s pay would continue to be based on actual pay as opposed to the statutory maximum figure of £430.

In relation to efficiency release the council proposed to maintain the existing scheme i.e. employees receive 1 week’s pay for every year of continuous service with Oldham Council (Schools) subject to a minimum of 12 weeks.

4.2 The unions counter proposed that the council consider improving the maximum number of weeks pay from 30 in order to protect longer serving members of staff. In response the council considered that it was unable to revise the offer as it was a significant improvement compared to the original proposal made in August 2011.

4.3 It remains the council’s position that the redundancy scheme for non-teaching staff is non-contractual and that therefore the council is in a position to implement the proposals without a collective agreement.

4.4 The position regarding teachers is different as detailed at 3.2(iv) and there is a contractual right to the discretionary payment detailed in the scheme. Consultation regarding proposals to change the teachers’ scheme will therefore have to continue with a view to reaching agreement to mirror the revised terms applicable to non-teaching staff. However should agreement not be reached, the council will have to determine whether it is prepared to go through a formal variation process with individual members of staff which would involve the potential termination and re-engagement of approx 1,500 teachers. This process will not therefore be achieved in the same timescales as the introduction to non-teaching staff and will mean, unless agreement is reached with the teaching unions, that the two different schemes will run in parallel.

4.5 Consultation with the non-teaching unions ended on 5th September 2012 without agreement being reached. However it was recognised that through consultation the unions had been able to affect the council’s position and to improve the offer from the original proposal. As such it was accepted by the non-teaching unions that the current position was arrived at through a proper process and that the non-teaching unions would not be registering a dispute.

4.6 As a result it is intended to impose the scheme in relation to non-teaching staff.

5.0 Proposals

It is proposed that the revised scheme be adopted i.e. that:

a) the redundancy payment schemes for non-teaching staff:
(i) be revised to pay to a reflect a multiplier of 1.5 times the statutory redundancy weeks subject to a maximum of 30 weeks gross pay;

(ii) the statutory number of weeks each week paid at the actual level of a weeks’ pay; and

(iii) be applied to both voluntary and compulsory redundancies in most circumstances.

However it is proposed that if, in the future, the number of volunteers diminish to a point where compulsory is the only option, then the council may choose to exercise its discretion under the 2006 Discretionary Regulations above and to increase the package for volunteers from time to time to generate greater take up.

b) in relation to the efficiency scheme for non-teaching staff the scheme remain unchanged i.e. that it continue to be based on 1 week’s pay for every continuous year of service with Oldham Council subject to a minimum 12 weeks.

c) in relation to pensions, the council continues not to exercise its ability to augment membership or annual pension and that access to pension continues to be in line with scheme rules.

d) consultation regarding proposals to change the teachers scheme continues with a view to reaching agreement to the revised terms.

6.0 Consultation

6.1 Consultation has taken place with the teacher and non teacher trades unions with a view to seeking agreement.

7.0 Financial Implications

7.1 Redundancy payments are dependent on the age, length of service and salaries of each individual made redundant, along with the total number of individuals made redundant. Any cost reductions attributed to the change in the scheme can only therefore be determined at the point that decisions are made which result in a redundancy payment being enacted.

As such, the cost saving arising out of these proposals cannot be quantified exactly for this, or subsequent financial years, at a Council wide level.

7.2 However, purely as an illustrative figure only, applying the proposals contained within the report to redundancies made as part of the 2012/13 budget setting process would have reduced the cost of those redundancies by around £1.727m form £4.260m to £2.533m (JP)

8.0 Legal Services Comments
8.1 Legal issues are accurately addressed in the body of the report. (CB)

9.0 Human Resources Comments

9.1 Officers from People Services have been involved in the development of these proposals and the process for implementation. Following consultation, the council is entitled to implement the proposals in relation to non-teaching staff as it has been confirmed that they do not form part of the employment contract.

9 Risk Assessments

9.1 None required

10 IT Implications

10.1 None

11 Property Implications

11.1 None

12 Procurement Implications

12.1 None

13 Environmental and Health & Safety Implications

13.1 None

14 Equality, community cohesion and crime implications

14.1 It will continue to be important to continue to monitor or redundancy selection processes and outcome to ensure that there is no disproportionate impact on specific groups of employees. However the proposals will be applied equally to all employees selected in most cases. Where it is deemed necessary to improve the package to encourage volunteers this should again be applied consistently

15 Equality Impact Assessment Completed?

15.1 No

16 Key Decision

16.1 Yes

17 Forward Plan Reference
17.1 Exemption received 21st Sept 2012

18 Background Papers

18.1 None

19 Appendices

19.1 None