

**Personnel Committee – 5 December 2022**

**Implementation of Government Guidance in respect of Special Severance Payments**

**1. Purpose of the report**

- 1.1 To implement Government Guidance issued by the Department for Levelling Up, Housing & Communities (DLUHC) published on the 12<sup>th</sup> May 2022 on the making and disclosure of “Special Severance Payments” by Local Authorities in England.

**2. Recommendations**

Personnel Committee is recommended to:-

1. Approve that the Government Guidance in respect of Special Severance Payments be implemented within Walsall Council with immediate effect.
2. Approve an amendment to the Pay Policy Statement 2022/23 making the necessary changes to implement the Government Guidance in relation to Special Severance Payments;
3. Note that the Government Guidance in respect of Special Severance Payments shall be incorporated within future annual Pay Policy reviews;
4. Request that Council approve the following amendments to the Constitution:-

PART 3.2 (9) Personnel Committee

(15) To appoint a Sub Committee of Personnel Committee to include at least two Independent Persons, appointed under the provisions of Section 28 of the Localism Act 2011 to consider special severance payments in respect of the Head of Paid Service.

Part 3.5 - Officer Scheme of Delegations

4.10 (e) To take all action to recruit, appoint, develop, manage and reward employees within approved Council policies and the law (including the operation of approved policies for voluntary severance **up to £20,000**, early retirement, redundancy and redeployment) and conditions of service in consultation with the

Director – Human Resources and Section 151 Officer where applicable

## 12. Chief Executive

(12.9) To approve special severance payments of £20,000 and above, but below £100,000 (with a clear record of the Leader’s approval and that of any others who have signed off the payment).

### **3. Background Information**

#### *Aim*

- 3.1 The aim of this report and the recommendations detailed in section 2 allows Walsall Council to ensure that we are compliant with the statutory guidance on the making and disclosure of special severance payments by Local Authorities and have published policies and processes in place to govern the approval of such payments.

#### *Know*

- 3.2 In November 2020, the government introduced a statutory exit cap on payments, limiting these to a maximum of £95,000 on exit payments for public sector authorities. In February 2021, the government announced that the regulations relating to the cap would be revoked with effect from March 2021 as there was a disproportionate impact on workers who were over 55, who had provided long service. This was an unintended outcome of the regulations. Further reforms to exit payments were expected during 2021 but did not come through.
- 3.3 On the 12 May 2022 the Department for Levelling Up, Housing and Communities issued statutory guidance under section 26 of the Local Government Act 1999, setting out the government’s position on the use of Special Severance Payments made by local authorities. This guidance forms part of the best value regime for local authorities in England. The best value duty, as set out in section 3 of the Local Government Act 1999 provides that “A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. The best value duty is relevant to local authority duties to deliver a balanced budget, provide statutory services and secure value for money in spending decisions. This will include decisions to make Special Severance Payments.
- 3.4 The purpose of the statutory guidance is to;
- Set out the Government’s view that Special Severance Payments do not usually represent value for money and should only be considered in exceptional circumstances;

- Set out the criteria employers should consider in the exceptional circumstances in which it may be appropriate to make a Special Severance Payment;
- Give examples of the exceptional circumstances in which Special Severance Payments may be appropriate;
- Clarify the disclosure and reporting requirements for Special Severance Payments.

3.5 Severance payments can be an important mechanism to allow employers to reform and react to new circumstances in the workplace, but employers have a responsibility to ensure that Special Severance Payments are only made when there is a clear, evidenced justification for doing so. They should also ensure that all relevant internal policies and procedures have been followed and all alternative actions have been fully explored and documented.

3.6 In the exceptional circumstances where it is decided that a Special Severance Payment should be paid, it is the responsibility of the employer to ensure their Special Severance Payments arrangements are fair, proportionate, lawful and provide value for money for the taxpayer.

3.7 In the context of this guidance, Special Severance Payments are payments made to employees, officeholders, workers, contractors, and others outside of statutory, contractual or other requirements when leaving employment in public service. Employers may sometimes consider making such a payment in situations where the individual concerned resigns, is dismissed, or agrees a termination of contract. Which types of payments are Special Severance Payments will vary according to an employee's particular circumstances, and therefore the examples in paragraphs 3.9 and 3.10 are illustrative only.

3.8 It is established case-law that such payments, where in accordance with legislation, may only be made where there is a convincing case that they are in the interests of taxpayers. Local authorities may not be generous at the expense of taxpayers and must genuinely consider payments to be in the public interest. In taking decisions elected members must make all proper enquiries and consider all available material that can help in coming to a decision.

3.9 The following types of payments are likely to constitute Special Severance Payments:

a) any payments reached under a settlement agreement between the employer and employee to discontinue legal proceedings without admission of fault

b) the value of any employee benefits or allowances which are allowed to continue beyond the employee's agreed exit date

c) write-offs of any outstanding loans

- d) any honorarium payments
- e) any hardship payments
- f) any payments to employees for retraining related to their termination of employment

3.10 The following types of payments may constitute Special Severance Payments, depending on the terms of the individual's contract, relevant statutory provisions, any non-statutory applicable schemes and other relevant terms and conditions:

- a) pay or compensation in lieu of notice where the amount of the payment is not greater than the salary due in the period of notice set out in the employee's contract
- b) pension strain payments arising from employer discretions to enhance standard pension benefits (for example under Regulation 30(5) where the employer has waived the reduction under Regulation 30(8) or because of the award of additional pension under Regulation 31)

3.11 The following do not constitute Special Severance Payments:

- a) statutory redundancy payments
- b) contractual redundancy payments, whether applicable to voluntary or compulsory redundancy, and whether agreed by collective agreement or otherwise
- c) severance payments made in accordance with that local authority's policy adopted pursuant to Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
- d) a strain cost paid to the relevant LGPS administering authority under LGPS Regulation 68(2) which results from a LGPS member's retirement benefits becoming immediately payable without reduction under Regulation 30(7), or under Regulation 30(6) where the employer has waived the reduction under Regulation 30(8)
- e) payment for untaken annual leave
- f) payments ordered by a court or tribunal or agreed as part of a judicial or non-judicial mediation
- g) payments made as part of the ACAS Early Conciliation process
- h) payments made to compensate for injury or death of the worker

i) payments made in consequence of the award of ill-health retirement benefits under Regulation 35 of the LGPS Regulations

- 3.12 In addition, the guidance requires the Council to consider: a) The economic rationale behind a proposed Special Severance Payment (value for money); b) the effectiveness and efficiency of making such a payment. The council should take into account: how the public will perceive it; what alternative uses could be made of the expenditure; precedent; e) evidence of additionality, i.e., that those offered Special Severance Payments would not have been willing, under any circumstances, to leave with their statutory and contractual benefits alone.
- 3.13 There may be exceptional circumstances where the existing statutory or contractual entitlements, or both, are insufficient to facilitate an exit or to offer sufficient compensation for loss of employment or office. This can apply to office holders as well as staff. These circumstances, which we expect to be exceptional and provide value for money, may be taken into account by local authorities in deciding whether or not to make a Special Severance Payment.
- 3.14 Authorities may consider a Special Severance Payment in order to set aside what would otherwise be a reduction in entitlement caused by a break in continuity of service (e.g. where a member of staff has taken a break in service to accompany their spouse on military service overseas). Authorities may also consider that a Special Severance Payment is appropriate in circumstances where, to help recruitment and retention, it has resolved to recognise for severance payment calculation purposes past service with another non-Modification Order employer (such as service with the NHS prior to the transfer of public health functions to local government).
- 3.15 Authorities may also consider a Special Severance Payment in order to settle disputes, where it can be properly demonstrated that other routes have been thoroughly explored and excluded. After receiving appropriate professional advice, it may then possibly be concluded that a special severance payment is the most suitable option and prudent use of public money.
- 3.16 Those approving a Special Severance Payment related to a settlement agreement should be provided with appropriate evidence that attempts were made to resolve disputes before they escalated to a legal claim. They should also bear in mind that even if the cost of defeating an apparently frivolous or vexatious claims will exceed the likely cost of that settlement to the employer, it may still be desirable to take the case to formal proceedings. This is because successfully defending such cases will discourage future frivolous or vexatious claims and demonstrate that the local authority does not reward such claims.
- 3.17 The guidance requires that an approval process is put into place. It is proposed that the following process be agreed in Walsall for all posts except for the Head of Paid Service which is clarified at paragraph 3.19:-

<b>Special Severance amount</b>	<b>Decision Process</b>
In excess of £100,000	Personnel Committee (as existing)
£20,000 and above but less than £1000,000.	Head of Paid Service; with a clear record of the Leader's approval and that of any others who have signed off the payment:
Below £20,000	Chief Executive and Executive Directors

- 3.18 The policy and process for approving the payments detailed in the table above will be detailed in the Council's annual Pay Policy Statement, which will be considered by Personnel Committee on 23<sup>rd</sup> January, 2023.
- 3.19 Where the proposed payment is to the Head of Paid Service, to avoid a conflict of interest it is expected that the payment should be approved by a sub committee of Personnel Committee, including at least two independent persons.
- 3.20 The Guidance recognises the important role of the s151 Officer and Monitoring Officer requiring them where appropriate to take a close interest in, and be able to justify, any Special Severance Payments that are made by the authority and in particular any payments made that are not consistent with the content of the guidance.

*Our Council Plan priorities*

- 3.21 This report aligns to the council's strategic priority of internal focus ensuring all council services are customer focussed, effective, efficient and equitable and helps ensure consistency, fairness and transparency.

*Decide*

- 3.22 Personnel Committee are asked to approve the recommendations as detailed in section 2 of this report,.

*Response*

- 3.23 Subject to approval, the recommendations will be implemented as set out in this report and relevant amendments / updates will be made to the Council's Pay Policy when it is next due for approval by full Council.

*Review*

- 3.24 The council will review the operation of this guidance as part of the review of the Pay Policy Statement which is reviewed on an annual basis.

#### **4. Financial implications**

4.1 None contained within this report.

#### **5. Legal considerations**

5.1 As a statutory organisation and in accordance with Article 1 of the Council's constitution the council is required to act in accordance with the law. There is a legal requirement for the council to give effect to this statutory guidance. The guidance forms part of the best value regime for local authorities in England. The best value duty, as set out in [section 3 of the Local Government Act 1999](#) ("the 1999 Act"), provides that "A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". The best value duty is relevant to local authority duties to deliver a balanced budget (Part 1 of the Local Government Finance Act 1992), provide statutory services (including adult social care and children's services) and secure value for money in spending decisions.

#### **6. Consultation**

6.1 Consultation has taken place with the leader of the Council and with CMT (13 Oct 2022).

#### **7. Background papers**

[Statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England - GOV.UK \(www.gov.uk\)](#)

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