

report

meeting	NOTTINGHAMSHIRE AND CITY OF NOTTINGHAM FIRE AND RESCUE AUTHORITY	
date	7 September 2007	agenda item number

REPORT OF THE CHIEF FIRE OFFICER

DISCRETIONARY COMPENSATION PAYMENTS POLICY

1. PURPOSE OF REPORT

To determine the policy of the Fire and Rescue Authority in respect of severance payments in the event of termination of employment on the grounds of redundancy, efficiency or early retirement, as required by Regulation 7(1) in relation to Regulations 5 and 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) payments 2006.

2. BACKGROUND

- 2.1 The above regulations were amended from 30 October 2006. This placed a requirement on all public bodies aligned to the Local Government Pension Scheme to formulate, publish and keep under review the policy that they apply in the exercise of their discretionary powers under regulations 5 and 6. Such a policy to ensure that there is "local and accountable value for money and transparency principles are clearly demonstrated to taxpayers and auditors" (Communities and Local Government (CLG) guidance note). Also, that any policies took into account the provisions of the Employment Equality (Age) Discrimination Regulations 2006.
- 2.2 Regulation 5 relates to the power of the Authority to increase statutory redundancy payments in the event of the termination of employment due to redundancy (compulsory or voluntary).
- 2.3 Regulation 6 relates to the power of the Authority to make a discretionary compensation payment to a person, under Regulation 4, whose employment is terminated:
- I. by reason of redundancy ;
 - II. in the interests of the efficiency exercise of the employing authority's functions, or ;
 - III. in the case of a joint appointment.
- 2.4 The original Discretionary Compensation Scheme adopted by the Authority was that applied by the Nottinghamshire County Council. It was therefore determined by the Human Resources, at its meeting on 5 January, that any agreement made by the Nottinghamshire County Council would be considered for adoption by the Authority, with consideration also being given to alternative schemes.

- 2.5 This matter was first considered by the Human Resources Committee on 5 January 2007 and referred on to the Policy and Strategy Committee on 30 March 2007.

3. REPORT

- 3.1 In the period since the meeting of the Policy and Strategy Committee, the Nottinghamshire County Council have formulated, consulted upon and agreed a Discretionary Compensation Scheme. This scheme is based upon the key principles that:

- Agreement to applications for voluntary redundancy would be considered individually in the context of business and service needs;
- Any approach to the consideration of compensation benefits would be unfettered, for payment purposes, will be considered on its own merits, taking into account individual circumstances;
- Redeployment would always be sought as an alternative to redundancy;
- Any level of enhancement would subject to a normal “payback” period of 2.5 years.

- 3.2 The proposed policy, as adapted from that adopted by the Nottinghamshire County Council, is attached as Appendix A, detailed guidance notes as Appendix B and comparative examples as Appendix C.

- 3.3 The scheme agreed by the Nottinghamshire County Council meets the criteria placed upon the Authority by the CLG guidance note referred to paragraph 2.1 and the adoption of this scheme would be the preferred option of the Chief Fire Officer and Head of Finance and Resources. Research has shown that the other Fire and Rescue Authorities in the region intend to align their policy to that adopted by their respective County Councils.

- 3.4 Adopting the County Council scheme in full would result in the following compensation benefits in the case of redundancy, efficiency or early retirement:

3.4.1 Redundancy

The redundancy payment would be based upon the statutory formula and use gross pay rather the minimum statutory redundancy payment to calculate the redundancy payment.

Additionally, employees under 50 or over 50 not in a pension scheme will normally be awarded compensatory weeks pay in excess of redundancy entitlement on a % basis, up to the maximum available to the individual under Compensation Regulations (up to 104 weeks). However, unless exceptional personal circumstances apply, this would be capped at 66 weeks.

Employees over 50* will normally be considered for an award of added years (to their pensionable service) in accordance with the factor score matrix set out in the guidance document.

3.4.2 Efficiency Termination

Each case would be considered on its own merits in accordance with the factor score matrix set out in the guidance document

3.4.3 Early/Flexible Retirement

The Authority will consider applications for early retirement for employees aged 50*-60 on a case by case basis. The Authority may agree to the early retirement either with actuarial reduction or, on exceptional compassionate grounds, without actuarial reduction. In the latter case, the Authority would incur the cost of pension strain in effecting an early retirement. In making its determination it is advised that the Authority would take account of extenuating personal circumstances such as severe ill health, immediate caring responsibilities, evidence of serious financial hardship.

It should be noted that under the "85 year rule" previously available under pension regulations will be removed from 1 April 2008 and refers to employees whose combined age and length of service is or exceeds 85 years in total. However protection has been granted to existing pension scheme members who attain the age of 60 by 31 March 2016 and phased protection for those attaining age 60 between 1 April 2016 and 31 March 2020.

Under the "85 year rule" employees between 50* and 60 can retire with the employers consent without actuarial reduction to pension.

Additionally, since April 2006, there has been a facility within Regulation 35 of the Local Government Pension Scheme for employers to consider applications for "flexible retirement" from LGPS members. In this instance, the employee would be able to draw down early payment of pension benefits if they are aged over 50* and remain in part-time employment without affecting their pension benefit. Whilst such requests would not be subject to the Discretionary Compensation Scheme, i.e. would not be eligible for additional benefits or payments, it is considered that such applications should be dealt with through the auspices of an established Compensation Board to ensure consistency of treatment.

3.5 A further option is for the Authority to determine its own Discretionary Compensation scheme. However the complexities of regulation in this area would make this a difficult proposition for the Authority to undertake on a unilateral basis. It is also likely that any final agreement will reflect a scheme similar to that already adopted by the County Council i.e. based on consideration of each individual case.

3.6 UNISON have already been consulted on this proposal and have indicated their agreement to the adoption of the same scheme as that applied by the Nottinghamshire County Council. The Fire Brigade's Union (FBU) is currently considering its response.

* Under changes to LGPS regulations effective from 1 April 2008, the earliest age at which employees can draw pension benefits will increase from 50 to 55. There will be a short period of protection for existing LGPS members.

4. RISK MANAGEMENT IMPLICATIONS

The Authority has a statutory duty to formulate and issue a Discretionary Compensation Scheme, delays already mean that the Authority has not met the requirement to publish its policy by 1 April 2007. Any policy would need to be negotiated with the representative bodies (UNISON, FBU) and be subject to scrutiny in terms of its compliance with the regulations. A significant advantage of adopting the policy agreed by the County Council is that it has already been subject to extensive negotiation with the representative bodies and to legal scrutiny. To an extent, the Authority would therefore share the risk of any future challenge.

5. FINANCIAL IMPLICATIONS

On the basis that under the previous Discretionary Compensation Scheme, the Authority had a stated policy of maximising compensation benefits, the proposed scheme will not, in the majority of cases, increase the cost of effecting redundancies or early terminations of service. It is likely that the cost will actually be less than that available under the previous scheme. The only variance to this will be where the Authority agrees to a compensation payment above the cap of 66 weeks pay in cases involving exceptional personal circumstances. In most cases of redundancy, the discretionary enhancement will be matched by savings achieved over a 2.5 year period. This means that there will be additional costs in the short term, however in the medium to long term there will be no overall financial implication apart from the potential for savings

6. PERSONNEL IMPLICATIONS

Once agreed the Discretionary Compensation Scheme policy will form part of the terms and conditions of service for members of the Local Government Pension Scheme i.e. non-uniformed and control staff.

7. EQUALITY IMPACT ASSESSMENT

The policy has been designed to meet changes to the regulations arising from age discrimination legislation and reduce the likelihood of legal challenge. The discretionary element of the application of the policy ensures that individual circumstances are taken into account when considering applications equally and fairly from all employees irrespective of their race, gender, disability, religion or sexual orientation. It has been recognised and accepted that the policy does differentiate in terms of age, in that certain benefits are only available to those employees aged over 50, however this is justified by the application of Local Government Pension Scheme regulations relating to the early payment of pension benefits.

8. RECOMMENDATIONS

- 8.1 That the proposed Discretionary Compensation Scheme is adopted by the Authority, subject to consultation on any issues raised by the Fire Brigade's Union as part of the consultation exercise.
- 8.2 That, should the Scheme be adopted, the Chief Fire Officer be tasked with forming a Compensation Board to consider and make recommendations on applications under the scheme.
- 8.3 That the Human Resources Committee receive delegated responsibility from Authority for approving compensation payments under the Policy reporting their decisions to Authority.

9. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)

None.

Frank Swann
CHIEF FIRE OFFICER



NOTTINGHAMSHIRE
Fire & Rescue Service
Creating Safer Communities

POLICY NO:
POL: 1033

Discretionary Compensation Policy

Scope:

This policy is subject to consultation

Summary:

The purpose of this policy is to set out the position of the Authority in respect of discretionary compensation payments in the event of redundancy, efficiency termination and early retirement for employees who are, or who are eligible to be, members of the Local Government Pension Scheme .

Version Control:

<i>Person Responsible</i>	<i>Version</i>	<i>Date</i>
HR Manager (Corporate)	0.5	June 2007

Review Date:

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1.0 Definition

- 1.1 Discretionary compensation payments may be made under the provisions of Regulations 5 and 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006.
- 1.2 The Policy refers to the power of the Authority to make a discretionary compensation payment (severance payments) to an employee, under Regulation 4, whose employment is terminated:
- By reason of redundancy
In the interests of the efficient exercise of the employing authority's functions
In the case of joint appointment, because the other holder of the appointment has left it.
- 1.3 Additionally, the Authority may agree to a request for early retirement and payment of benefits before the normal retirement age.

2.0 General Principles

- 2.1 Compulsory redundancy will only be instigated when all other reasonable available means of managing business needs have been considered and exhausted.
- 2.2 Selection for voluntary redundancy will be considered on an individual basis in the context of business and service needs, there will be no guarantee that requests will be supported. Applicants for voluntary redundancy or early retirement will not normally be considered where they are currently the subject of disciplinary, competency or attendance management procedures which may lead to their dismissal.
- 2.3 To ensure an unfettered approach, for payment purposes, each case will be considered on its own merits, taking into account individual circumstances.
- 2.4 In all cases, consideration of redeployment to a suitable alternative post is a legal requirement and will be given priority before any consideration of a severance payment i.e. where there is a need to make reductions in a particular area of work and an individual's skill set could transfer elsewhere in the authority, avoiding the need for redundancy.
- 2.5 Should a reasonable offer for redeployment be made to a suitable alternative post involving a reasonably comparable grade, status and location be declined, the employee will have waived the right to a redundancy payment or early release of pension, and to a compensation payment unless exceptional circumstances prevail.
- 2.6 Normally, "payback" over a 2.5 year period will be the criteria for the determination of any level of enhancement.
- 2.7 Recommendations regarding the level of any discretionary compensation award will be made by the Compensation Board.

2.8 Personal circumstances may be taken into consideration for the determination of the level of any enhancement.

3.0 Application

3.1 In cases of compulsory or voluntary redundancy, the provisions of the Redundancy Policy will apply (to be agreed). The compensation payment will be based upon the statutory formula and will normally be based upon an individual's gross pay.

3.2 The following provisions will normally apply for **employees under 50 years of age and those aged over 50 not in a pension scheme**:

Normally the Authority will award compensatory weeks in excess of the basic redundancy entitlement on a % basis, up to the maximum number of weeks available to the individual under the Compensation Regulations;

Any discretionary payments for employees under age 50 and those over age 50 not in a pension scheme may be made up to a maximum of 104 weeks but will normally be capped at 66 weeks.

3.3 **For employees over 50 years of age (LGPS members):**

Any award of added year's service will normally be considered on an individual basis, in accordance with the factor score matrix set out in the procedural guidance notes.

3.4 In cases of **efficiency termination**, each case will be considered on its own merits in accordance with the factor score matrix set out in the procedural guidance notes.

3.5 Efficiency cases may be considered in circumstances involving reorganisation or restructuring, where redundancy is not a factor, but are more generally related to health, ability or exceptional personal circumstances i.e. caring responsibilities. (Ill-health will only be a consideration where the employee is not able to access immediate payment of pension benefits under the Pension scheme).

3.6 In cases of **early retirement**, consideration should be given of applications under the 85 year rule where this is applicable. This will apply to members of the pension scheme before 1st April 2008 who attain the age of 60 by 31st March 2016. A phased protection will apply to those who attain the age of 60 between 1st April

3.7 Under the "85 year rule" employees aged over 60 can retire without the employers consent and without actuarial reduction to their pension OR employees between the ages of 50 and 60 can retire with the employers consent without actuarial reduction in pension, if their age and length of service cumulatively total at least 85 years.

3.8 Early retirement outside of the "85 year rule" will be considered for employees aged between 50* and 60, who do not qualify under the rule, may retire with the employers' consent with actuarial reduction in pension benefits. Exceptionally the Authority may waive any actuarial reduction to pension benefits on exceptional compassionate grounds.

- 3.9 It should be noted that early retirement on the basis set out in Para's 3.7 and 3.8 may result in an actuarial strain on the pension scheme which will be charged to the Authority.
- 3.10 Under Regulation 35 of the Local Government Pension Scheme, members who have attained the age of 50* may apply to reduce their working hours and take early payment of pension benefits whilst remaining in employment. Approval of such applications would be at no cost to the Fire Authority and would be subject to evaluation of the benefits to the Service in effecting a reduction in working hours in each individual case.
- 3.11 In circumstances where employees are retired from service with pension enhancements and are subsequently re-employed by the Fire Authority or with another local authority employer, an abatement of pension will be applied such that the employee may not earn more in their new role, taking into account both salary and pension payments, than the salary earned prior to retirement. However they will retain the lump sum payment payable on retirement.
- 3.12 In order to give proper consideration to each individual application under this policy, a Compensation Board will be established by the Authority to scrutinise the circumstances of each application and make recommendations to the Fire Authority. The role of the Compensation Board is set out in the procedural guidance notes.

* Please note that proposed changes to the LGPS which become effective from April 2008, will increase the earliest date at which early retirement can be requested to 55 (with employer consent). Existing members as at April 2008 will have the provision to request early or flexible retirement (with employer consent) from age 50 protected until 31st March 2010.

4.0 Roles & Responsibilities

The Head of Service will be responsible for making a business case in support of any proposed redundancies, whether compulsory or voluntary, and will be required to support any applications for consideration of efficiency terminations or applications for early retirement.

The Human Resources Dept will be responsible for providing advice and guidance on the application of the Policy.

The Compensation Board will be responsible for considering all applications for compensation under the Policy, and for application for early retirement, and making recommendations to the Fire Authority.

5.0 Monitoring - Audit & Review

The Head of Human Resources will be responsible for monitoring the application of the Policy.

The Head of Finance and Resources will be responsible for auditing the financial aspects of the Policy.

The HR Manager (Corporate) will be responsible for reviewing and updating the Policy in line with changes to statutory regulations or local agreements.

GUIDANCE NOTES FOR DETERMINATION OF COMPENSATION FOR REDUNDANCY, EARLY RETIREMENT AND EFFICIENCY TERMINATION:

1. PRINCIPLES

Normally, any level of enhancement must be able to be met from within the maximum payback available for the individual case.

The relative impact that the early release of the individual will have in enabling the authority to protect the employment of another individual, or individuals, in order to achieve necessary budget savings (for example through “bumping”), may also be taken into consideration.

Evidence of the degree of compliance by the individual with the re-deployment process should also be taken into consideration.

2. FACTORS

The framework criteria set out below for the application of discretion in compulsory and voluntary redundancy and efficiency cases to award added years in addition to pension entitlement, led by considerations around loss of office, is based on a combination of 4 factors, using a points system matrix to guide discretion:

- a) Skills – that is the potential to secure comparable work and at what level (assuming normal competency and based on current available labour market analysis and recruitment trend information).
- b) Length of aggregated Local Government service (as defined by Redundancy Modification Order)
- c) Length of aggregated Nottinghamshire Fire & Rescue Service (employees over 50 years of age in the pension scheme only).
- d) At b) and c) above, service will be aggregated to take into account any breaks in service, where a redundancy payment has been made by a previous local government employer, the period of service with that employer will be discounted.
- e) Exceptional personal circumstances, including potential hardship resulting from redundancy. The identification of any exceptional personal circumstances will be wholly voluntary and will be included, with the employee’s agreement. The anonymity of the individual concerned will be protected by the use of case numbers instead of names.

Under the LGPS Regulations, at the request of the employee, the employer may use the value of any additional compensation lump sum (over and above the value of the redundancy payment awarded) to purchase augmented pensionable membership for the employee. In effect this gives LGPS members some flexibility of benefits package under the scheme.

a) applies to employees age 50 or over, in the LGPS or Firefighter Pension Scheme who are either redundant or are being retired early in the interest of the efficiency of the service and are able to have immediate access to pension benefits:

FACTOR SCORING MATRIX:

SKILLS	
High potential for re-employment in the current labour market	30
Medium potential for re-employment in the current labour market	60
Low potential for re-employment in the current labour market	90
LOCAL GOVERNMENT SERVICE	
Under 5 years	0
5 - 9 years	30
10 – 19 years	60
20 – 29 years	90
30 plus years	120
SERVICE WITH NFRS (additional points)	
Under 5 years	0
5 – 9 years	10
10 – 19 years	20
20 – 29 years	30
30 plus years	40

TOTAL FACTOR SCORE:

- An individual's total point score will normally be translated into a range of possible severance payments as set out below.
- These will be weighted so that an individual will score below the mid point of their point score range will normally be awarded a lower number of enhanced years. An individual whose total points score places them above the mid point of the range and would normally be awarded a higher number of added years within that range.

ACHIEVABLE POINTSCORE BANDS	PAY TO BE USED IN REDUNDANCY CALCULATIONS (where applicable)	SERVICE ENHANCEMENT – REDUNDANCY AGE OVER 50	SERVICE ENHANCEMENT – EFFICIENCY TERMINATION AGE OVER 50
BAND 1: 30 – 100 points	Normally, redundancy payments based on actual gross weekly pay.	Normally up to 2 years	Normally up to 1 year
BAND 2: 110 – 180 points	As above	Normally 2 – 3 years	Normally up to 2 years

BAND 3: 190 – 250 points	As above	Normally 3 – 5 years	Normally up to 3 years
Presence of one or more exceptional personal factors as set out in para 2.3	As above	Up to a maximum of 6 2/3rds added years (which includes the above)	Up to a maximum of 6 2/3rds added years (which includes the above)

b) applies to employees under 50 years of age or those over 50 not in the LPGS who are redundant: and is based on the application of a multiplier of 2.2 to the statutory redundancy payment, as set out in the Redundancy Payment Ready Reckoner for 1st October 2006 onwards:

- Any discretionary compensation is offset against the statutory redundancy payment
- As agreed by Personnel Committee 13th July 2006, any discretionary one off payments will normally be capped at 66 weeks.
- The Council will normally award 100% of the relevant allowance, up to 66 weeks.
- Anything above this up to the discretionary ceiling in the Compensation Regulations of 104 weeks in exceptional circumstances relating to skills and/or personal circumstances as defined in 2 a) and d) above, namely:

Skills: That is the potential to secure comparable work and at what level (assuming normal competency and based on current available labour market analysis and recruitment trend information).

Exceptional personal circumstances: Including potential hardship resulting from redundancy. The identification of any exceptional personal circumstances will be wholly voluntary and will be included, with the employee's agreement. The anonymity of the individual concerned will be protected by the use of case numbers instead of names.

	SERVICE (YEARS)																																									
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40			
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49	7	10	13	17	20	23	26	29	31	33	35	37	40	42	44	46	48	51	53	55	57	59	62	64	66	68	69	70	72	73	74	75										
50	7	10	13	17	20	23	26	30	32	34	36	39	41	43	45	47	50	52	54	56	59	61	63	65	67	69	72	73	74	75	35	77	78									

COMPARATIVE EXAMPLES

(a) employees under age 50 or over 50 but not in the pension scheme:

CASE (Example)	PREVIOUS (based on Discretionary Payments Regs pre 1.10.06, includes age)	PROPOSED LOCAL MODEL (based on redundancy ready reckoner applying a multiplier of 2.2, includes age at 100%)
	<u>Points Matrix up to 66 weeks</u>	<u>Spread Sheet (appendix 2)</u>
Under age 50:		
CASE 1: Employee age 32 total 10 years LG service	Age 32yrs	Age 32yrs
	LG Service 10yrs	LG Service 10yrs
	*Compensation payment = 20 wks	*Compensation payment = 22 wks
CASE 2: Employee age 40 total 15 years LG service	Age 40 years	Age 40 years
	LG service 15 years	LG service 15 years
	*Compensation payment = 30 wks	*Compensation payment = 33wks
CASE 3: Employee age 49 total 25 years LG service	Age 49 years	Age 49 years
	LG service 25 years	LG service 25 years
	*Compensation payment = 66 weeks (cap)	*Compensation payment = 64 wks
Over age 50 but not in the pension scheme:		
CASE 4: Employee age 55 with 27 years LG service	Age 55	Age 55
	LG service 27 years	LG service 27 years
	*Compensation payment = 66 wks (cap)	*Compensation payment = (75 wks) usually capped at 66 wks
CASE 5: Employee age 60 with 35 years LG service	Age 60	Age 60
	LG service 35 years	LG service 35 years
	*Compensation payment = 66 wks (cap)	*Compensation payment = (98 wks) usually capped at 66 wks

Employee age 63 with 39 years LG service	Age 63	Age 63
	LG service 39 years	LG service 39 years
	Compensation payment = 66 wks (cap)	Compensation payment = (up to 104 weeks) usually capped at 66 wks

(b) employees over age 50 in pension scheme:

CASE (Example)	PREVIOUS (based on Discretionary Payments Regs pre 1.10.06, includes age)	PROPOSED LOCAL MODEL: Total factor score
	<u>Points Matrix up to 66 weeks</u>	<u>Table (appendix 1)</u>
CASE 1: Redundancy of employee age 60 with 30 years LG service, all with NCC	Age = 60 = 90 points Skills = low = 90 points Service = 30 years = 120 points TOTAL = 300 points <ul style="list-style-type: none"> Possible enhancement of 2-5 years Subject to not exceeding 40 year pension rule	Skills = low = 90 points LG Service = 30 years = 120 points NCC Service = 30 years = 40 points TOTAL = 250 points <ul style="list-style-type: none"> Possible enhancement of 3-5 years Subject to Pay Board recommendation and not exceeding 40 year pension rule
CASE 2: Redundancy of employee age 55 with 25 years LG service, 20 with NCC	Age = 55 = 60 points Skills = medium = 60points Service = 25years = 90 points TOTAL = 210 points <ul style="list-style-type: none"> Possible enhancement of 1-4 years Subject to not exceeding 40 year pension rule	Skills = medium = 60 points LG Service = 25 years = 90 points NCC Service = 20 years = 30 points TOTAL = 180 points <ul style="list-style-type: none"> Possible enhancement of 2-3 years Subject to Pay Board recommendation and not exceeding 40 year pension rule
CASE 3: Efficiency termination of employee age 57 with 17 years LG service all with NCC	Age = 57 = 60 points Skills =low = 90 points Service = 17 years = 60 points TOTAL = 210 points <ul style="list-style-type: none"> Possible enhancement of up to 2 years Subject to not exceeding 40 year pension rule	Skills= low = 90 points LG Service= 17 years = 60 points NCC service = 17 years = 20 points TOTAL = 170 points <ul style="list-style-type: none"> Possible enhancement of up to 2 years Subject to Pay Board recommendation and not exceeding 40 year pension rule