

report

meeting	NOTTINGHAMSHIRE AND CITY OF NOTTINGHAM FIRE & RESCUE AUTHORITY	
	HUMAN RESOURCES COMMITTEE	
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REPORT OF THE CHIEF FIRE OFFICER

LOCAL GOVERNMENT EARLY TERMINATION OF EMPLOYMENT DISCRETIONARY COMPENSATION REGULATIONS

1. PURPOSE OF REPORT

To advise Members of changes to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (SI2914). This applies to members of staff who are eligible to be members of the Local Government Pension Scheme. The changes are effective from 29th November 2006, backdated to 1st October 2006. Revision of the Regulations requires that the Fire & Rescue Authority determine and publish its policy on discretionary payments.

2. BACKGROUND

The current policy on compensation payments is contained within Section G13 of the CFA Personnel Handbook (attached as Appendix A) and has been applied since 1998. The policy adopted was that applied by the Nottinghamshire County Council, adapted for use by the Combined Fire Authority. This policy has since been amended by the County Council, and is currently subject to further negotiation with the representative bodies.

3. REPORT

3.1 Prior to the changes set out above, provision for payment of compensation for termination of employment due to redundancy, efficiency or joint appointment allows for:

- § Payment of statutory redundancy payment if applicable (based on age and length of service), with discretion to base the payment on actual salary, and
- § Discretion to award compensation benefits (Compensatory Added Years) to increase the retirement pension up to a maximum award of the lesser of 10 years, or a period equal to the employers membership of the LGPS, or shortfall to age 65 or 40 years service. To be eligible the employee must be aged 50+ and have between 5 and 40 years of pensionable service, or
- § Up to 66 weeks lump sum severance payment (inclusive of redundancy payment) based on salary, or
- § Discretion under the LGPS (section 52) to increase the length of membership of any employee (known as Augmentation) to a maximum of 6 2/3rd yrs, or to age 65 or 40 years service (whichever is the lesser). This is known as Augmentation.

- 3.2 The decision on the payments to be made will depend upon the individual circumstance of each employee, particularly whether they are eligible to receive early payment of pension benefits. It is the policy of the Fire Authority to authorise maximum compensation in cases of redundancy – voluntary or compulsory. In cases of efficiency, the Authority has discretion according to the circumstances of each case. Current policy is contained within Section G13 of the CFA Personnel Handbook (attached as Appendix A).

Amended Regulations

- 3.3 The new regulations “give employers powers to consider compensation payments to employees whose employment is terminated early by reason of redundancy, in the interests of efficiency of the service, or, in the case of a joint appointment, because the other holder of the appointment has left it.”
- 3.4 The new provisions provide local government employers with powers to consider making a one off lump sum payment to an employee which must not exceed 104 weeks’ pay.
- 3.5 The Regulations no longer provide for the award of compensatory added years but employing Authorities’ may still augment a member’s local government pension by virtue of regulation 52 of the Local Government Pension Scheme Regulations 1997. The augmentation provisions under the Scheme were amended from 1st April 2004 and allow employers to award a member an additional period of membership at any time during active membership of the Scheme.
- 3.6 The Regulations contain transitional provisions to the end of the current 2006/07 financial year which means that an employer can choose to use either the 2000 regulations or the 2006 regulations for a person whose employment with them commenced before 1st October 2006 and whose termination date is on or after 1st October 2006 and before 1st April 2007. This means that an employer may make an award of compensatory added years to any employee whose employment terminates before 1st April 2007.
- 3.7 The Regulations continue to require each local authority employer to formulate, publish and keep under review their policies on compensation to ensure local and accountable value for money. In formulating their policies, employers will wish to consider the interests of all local stakeholders, involving them in early discussion wherever possible.

Issues for consideration

- 3.8 The Authority will need to formulate a revised policy on discretionary compensation payments and establish:
- (i) whether discretion will be applied to base a redundancy payment on actual gross weekly pay rather than the statutory minimum (currently £290 per week);
 - (ii) the circumstances in which the Authority would consider the application of a severance payment (up to 104 weeks pay) and the way this would be decided based upon assessment of each individual case (this cannot be a “blanket” policy applied to all cases);
 - (iii) the circumstances in which the Authority would allow augmentation as an alternative to a compensation (severance) payment and the way this would be decided based upon assessment of each individual case.

Nottinghamshire County Council

3.9 The current policy applied by the Authority reflects the provisions of the Nottinghamshire County Council scheme which were adopted in 1998. The County Council have since amended the provisions to ensure that each individual case is considered on its merits. Under the revised scheme 4 factors are currently used on a point system matrix to guide discretion in each case, these are:

- § Age
- § Skills (potential to secure alternative employment)
- § Length of local government service
- § Any exceptional personal circumstances

3.10 The County Council have agreed to use augmented years under Regulation 52 of the LGPS in place of any compensatory added years from October 2006 and to normally cap any discretionary payment for employees under age 50 to 66 weeks. However the impact of age discrimination legislation has led to a review of this arrangement and this is currently the subject of negotiation with representative bodies.

3.11 Decisions on discretionary payments are considered by a Pay Board who use the factor scoring matrix to determine the level of enhancement, or compensatory payment, to be applied in each case.

3.12 Due to the complexity of the issues involved in applying a Discretionary Compensation policy, the Authority is advised that any policy adopted be based upon the policy adopted by the Nottinghamshire County Council through negotiation with its representative bodies.

4. FINANCIAL IMPLICATIONS

It is difficult to be precise about the financial implications of this change in policy until it has been negotiated with the Trade Unions. On first sight however it would appear that the eventual negotiated position will not be significantly more or less costly than the present policy. A further report will be required when the negotiations have taken place and it is considered more appropriate for more detailed financial implications to be drawn up at that time.

5. PERSONNEL IMPLICATIONS

Personnel implications are contained within the body of the report. In view of the time required to formulate a policy, it would be advisable to use the transitional arrangements available under the new Regulations to apply the existing 2000 regulations for any cases of early termination arising from redundancy, efficiency or joint appointment arising before 31st March 2007. In addition, the Authority will be required to establish a process by which individual circumstances can be taken into consideration when determining early termination payments.

6. EQUALITY IMPACT ASSESSMENT

It is essential that the application of discretionary compensation payments is applied fairly and consistently, and take into account age discrimination legislation.

7. RISK MANAGEMENT IMPLICATIONS

7.1 Failure to adapt the current provisions in line with the amended Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations would lead to a challenge by the auditing body. A local authority's power to make payments on severance is limited to those conferred by

statute. As a consequence payments made in excess of those permitted by relevant legislation will be ultra vires.

- 7.2 Provisions which are based upon factors relating to age can be subject to legal challenge under age discrimination legislation.

8. RECOMMENDATIONS

- 8.1 That due to the urgency of interim arrangements the HR Committee approve the application of the provisions of the 2000 regulations in considering severance arrangements where employment is terminated before 31st March 2006, and that legal advice is sought in all cases to ensure compliance with legislation. This decision to be forwarded to Fire & Rescue Authority for ratification at its next meeting;
- 8.2 That the HR Committee consider on behalf of the Authority the application of the amended Discretionary Payment Policy to be adopted by the Nottinghamshire County Council following completion of negotiations with representative bodies, together with other policies from City Council and Fire & Rescue Services;
- 8.3 That the Authority give consideration to the method by which it will decide upon the severance payment, or pension augmentation, in each individual case. This would be subject to any decisions regarding the application of a revised policy in line with (8.2) above.
- 8.4 In respect of 8.2 and 8.3 above, that HR Committee forward its recommendations with a view to formal adoption to the Fire & Rescue Authority.

9. BACKGROUND PAPERS FOR INSPECTION

None.

Paul Woods
CHIEF FIRE OFFICER

CONTACT OFFICER	
Name :	Frank Swann Deputy Chief Fire Officer
Tel. No :	0115 967 0880
E-mail :	frank.swann@notts-fire.gov.uk

PREMATURE RETIREMENT COMPENSATION - NON UNIFORMED EMPLOYEES

1 General

- 1.1 Local authorities may, at their discretion, grant compensatory benefits to employees aged 50 years or over with 5 or more years service who cease their employment prematurely on grounds of redundancy or in the interests of the efficiency of the service.
- 1.2 The discretionary compensatory benefits which are in addition to accrued pensions benefits are paid in the form of an annual allowance and a lump sum calculated in exactly the same way as pensions benefits and achieved by awarding added years not exceeding the shortest of the following periods:-
 - * 10 years
 - * a period equal in length to actual service
 - * a period which, when added to actual service, does not exceed 40years
 - * a period equal in length to the period from the date of termination to the 65th birthday.
- 1.3 The compensatory benefits payable from the Council Tax (not the Pensions Fund) and the regulations provide for a mandatory abatement of the aggregate of the lump sums payable in circumstances where a redundancy payment is paid in addition to an increased lump sum arising from the award of additional years service. The abatement is at the rate of 30% of the redundancy payment for each year of service added in excess of $6\frac{2}{3}$. Because of the complicated nature of the Regulations all calculations should be undertaken by or following consultation with the Pensions Officer. (See Appendix 1).
- 1.4 It is Fire Authority policy to authorise maximum compensation in cases of redundancy - voluntary or compulsory. The extent of compensation in cases concerning the efficient discharge of the Fire Authority's functions is a matter of discretion according to the circumstances of each case.
- 1.5 Additionally, under the Local Government (Compensation for Redundancy) Regulations 1994, the Fire Authority has discretion to make an enhanced general compensation payment to those leaving after 28 December 1994, in cases of redundancy, and, for the first time, a compensatory lump sum to those retiring on the grounds of efficiency (see para 3). This is regardless of membership of the local government pensions fund, up to a maximum of 66 weeks pay and applies to those under 50 years of age with more than two years service or over 50 with between 1 and 2 years service.
- 1.6 For a period until 30 September 1999, any employee under 50 years of age, or over 50 with less than 2 years service, leaving the Fire Authority as a result of Local Government Reorganisation will also be eligible for enhanced severance payments up to a maximum of 66 weeks. Those over 50 years of age with more than 2 years service will qualify for discretionary consideration.

- 1.7 Any redundancy payment is subject to the employee not being in receipt of any offer of alternative employment at termination which commences within 4 weeks.
- 1.8 The full circumstances of redundancies shall be reported to the Fire Authority Committee at the earliest opportunity confirming the procedures that have been followed. Because of the discretionary aspects of voluntary redundancy and cases involving the efficient discharge of the Fire Authority's functions, Committee approval is required for the termination and level of enhancement.
- 1.9 Individuals taking early retirement should be encouraged to attend a pre retirement training course which is organised by the Fire Authority. Further details are available from the Personnel Section.

2 **Redundancy Cases**

- 2.1 Under the Employment Protection (Part-Time Employees) Regulations 1995, and Employment Act 1999 in dealing with premature retirement on redundancy grounds, it is important to bear in mind that a redundancy payment will be payable to all employees where the individual:-
 - 2.1.1 Has completed at least one years' recognised continuous employment.
 - 2.1.2 Is under the age of 65. For employees aged between 64 and 65, the cash amount due is reduced by 1/12th for every complete month by which the age exceeds 64.
- 2.2 The amount of redundancy depends upon length of recognised continuous employment, age and rate of pay. In regard to continuous employment the Redundancy Payments (Local Government) (Modification) Order 1983 (and subsequent amendment orders) introduced an arrangement whereby continuous services in Local Government, and in the employment of certain related bodies listed in the Order, is counted for the calculation of redundancy payments. There is no entitlement to a redundancy payment on a person's change of employment between two bodies covered by the Order if the employments are continuous. The total qualifying and reckonable local government service may be counted and the maximum redundancy payment is not more than the equivalent of 66 weeks' pay. The Fire Authority have agreed to calculate redundancy payments on actual weekly pay.
- 2.3 When considering premature retirement on redundancy grounds, the following considerations should be borne in mind:-
 - 2.3.1 Whether alternatives to redundancy are available e.g. redeployment in order to be satisfied that premature retirement with maximum enhancement of pension can be supported having regard to cost considerations.
 - 2.3.2 Whether specific staffing reductions can be achieved by inviting volunteers for redundancy. In this situation prior consultation should take place with the Head of Personnel and the Head of Finance and cost considerations should be taken into account.
 - 2.3.3 Whether potential redundancies in one section might be mitigated by early voluntary retirement in another.
 - 2.3.4 When inviting volunteers, the Chief Fire Officer has the right to refuse an application, provided that in recommending to the Fire Authority on specific redundancy situations, the Fire Authority Committee should be informed of all applications received.

3 **Efficiency Cases**

The circumstances by which the Fire Authority may use the provisions 'in the interests of the efficiency of the service' are often such that consideration of individual circumstances is more appropriate than general rules. The distinction between efficiency and redundancy is that in the latter the resultant vacancy is not filled. The circumstances in which employment may be terminated on efficiency grounds are not simply reorganisation/restructuring (such cases are more often on redundancy grounds) but are more generally related to health/ability/age considerations. Appropriate cases are those demanding an element of compassion e.g. the application of the provisions may be justified in a case of intermittent ill health where a person does not qualify for immediate payment of pensions benefits on grounds of permanent incapacity; or where an employee with long service becomes unable to adapt to modern methods or to a change of post and the Fire Authority cannot accommodate them elsewhere. In cases where genuine ill-health is a major factor, but not to the extent of permanent incapacity; 'maximum enhancement should be given, provided this does not exceed what the employee would have received had termination been on the grounds of permanent incapacity. It is important to stress that a decision on each case must be reached 'on the grounds of the efficient discharge of the Fire Authority's functions' and not merely on the basis of anticipated financial savings for the Fire Authority, this being necessary in order to comply with the appropriate pensions regulations. Any individual proposal is to be formulated in consultation with the Head of Personnel and the Head of Finance.

4 **Retirement on Health Grounds**

See Section H8.

5 **Pensions/Gratuity Payments**

When dealing with cases of redundancy or efficient discharge, it is necessary to bear in mind the following considerations relating to pensions/ gratuity payments:-

5.1 **Pensions Position of Employees Under 50 Years of Age at Termination**

With less than two years' membership in the scheme - contributions may be refunded or accrued rights transferred to the Pension Scheme of a new employment.

With two years' or more membership in the scheme - accrued rights may be either transferred to a new scheme or left in the Pensions Fund as deferred benefits payable at pension age. Alternatively, an election to receive early payment may be made at or after age 50 (with employer's consent if under 60). Benefits are reduced if the aggregate of the person's age, in whole years, and service, in whole years, is less than 85.

5.2 **Non-Pensionable Employees Aged Over 50 Years at Termination**

Gratuity payments are payable to employees over 50 years of age who are made redundant provided that 15 years' service has been completed. (See Section D19).

PREMATURE RETIREMENT COMPENSATION - NON UNIFORMED EMPLOYEES**Redundant Employee Aged 55 with 20 Years' Service**

Maximum Service at age 65 = 30 years

Enhanced service can be between $6\frac{2}{3}$ rds and 10 years

Salary level £16,194

Redundancy Payment, Pension and Lump Sum with Enhancement of $6\frac{2}{3}$ rds Years

Pension	$\text{£}16,194 \times \frac{1}{80} \times 26\frac{2}{3}$	=	£5,398
Lump Sum	$\text{£}16,194 \times \frac{3}{80} \times 26\frac{2}{3}$	=	£16,194
Redundancy Payment	27 weeks x £310.57 (weekly salary)	=	£8,385

Redundancy Payment Pension and Lump Sum with Enhancement of 10 Added Years

Pension	$\text{£}16,194 \times \frac{1}{80} \times 30$	=	£6,073
Lump Sum	$\text{£}16,194 \times \frac{3}{80} \times 30$	=	£18,218
Redundancy Payment	27 weeks x £310.57 (weekly salary)	=	£8,385
Abatement	Lump sum compensation of £8,385 is abated by 100%*		

* Where the period of enhancement exceeds $6\frac{2}{3}$ years and there is an entitlement to receive a redundancy payment, compensation under the Local Government (Compensation of Premature Retirement Regulations) is abated. The abatement is at the rate of 30% of the redundancy payment for each year of service added in excess of $6\frac{2}{3}$ rds.

** There is discretion to make an enhanced general compensation payment in the circumstances outlined in para 1.5 and 1.6.

*** Mandatory enhanced severance payments apply in circumstances outlined in para 1.6.

**** For employees over 50 with 5 or more year's service enhanced compensation may be paid as an alternative to service enhancement.