CHESHIRE EAST COUNCIL

Staffing Committee

Date of Meeting:	21st April 2016
Report of:	Head of Strategic HR
Subject/Title:	Exit Payments Overview

1.0 Report Summary

1.1 Following the deferral of the report to Staffing Committee on 14th January 2016 on the Voluntary Redundancy (VR) and Voluntary Early Retirment (VER) terms, this report updates Staffing Committee on the current situation in relation to the Governments proposals on the recovery of public sector exit payments, redundancy capping limits and additional consultation on wider reforms to public sector exit payments.

1.2 The report also provides a summary of packages currently offered by other North West Councils and in light of the potential raft of forthcoming legislation makes proposals regarding a further review of the Council's voluntary redundancy terms.

2.0 Recommendations

It is recommended that:

2.1 No immediate action is taken on amending Council VR and VER policies until the Government clarifies the postion on potential changes to the recovery, capping and wider review of exit payments for the public sector.

2.1 The Committee note the Council's current redundancy policy position compared to other Authorities in the North West and monitors closley the situation in relation to the Government's potential changes.

2.3 A further report and update on Government progress is brought to Staffing Committee on 5th July 2016, including a timeline for a review of the Council's Voluntary Redundancy terms and other associated policies as required.

3.0 Reasons for Recommendations

3.1 The Government has made it clear that it intends to take action to curb the incidence of, and costs associated with, early termination of employment across the public sector, including local government. Consultations have taken place relating to the recovery of termination payments for certain higher earners who are re-employed in the public sector within 12 months of having been made redundant, as well as introducing an overall cap on exit payments of £95,000. Publication of the final part of consultation is focussing on the wider reform of public sector exit payments. This latest consultation considers options for change relating to the calculation of discretionary exit payment lump sums (over and above statutory redundancy payments) as well as the early release of pension benefits resulting from redundancy terminations.

3.2 As a result of proposed and potential further changes from October 2016 onwards the Redundancy and Retirement policies should remain unchanged until all Government proposals are approved and legislated. In addition that clear implementation advice and practice is received from the Local Government Association (LGA) before amending the policies.

4.0 Wards Affected

4.1 None

5.0 Local Ward Members

5.1 None

6.0 Policy Implications

6.1 Any change to the current arrangements would represent a change to the Council's policy as to how it applies the Local Government (Early Termination of Employment) Discretionary Compensation) (England and Wales) Regulations 2006. In this event the policy would be updated to reflect the changes and published in accordance with the requirements.

6.2 In addition, the Council's Pay Policy Statement would need to be amended along with further amendments to the Retirement and Redundancy & Efficency policies to take account of those changes. Also if any amendments are required to the Councils Pensions Discretionary Statement, the discretionary regulations must be published for a month before any new terms are implemented.

7.0 Financial Implications

7.1 Each case for voluntary redundancy (VR) is scrutinised by a Staffing Officer Panel including an Elected Member and two Senior Officers, to evaluate the ongoing financial implications to the Council, and to check that alternative employment has been explored as an alternative to redundancy. This process will remain in place. This reduces risks and promotes value for money in the process, by comparing the costs of each VR with the associated annual savings, and considering the pay-back period. Cases proposed which involve a pay-back period of over a year are particularly carefully scrutinised.

7.2 The medium term financial strategy assumes the costs of redundancy will be met on existing terms, from approved budget envelopes, so the recommendation to retain existing terms will have no additional financial implications.

8.0 Legal Implications

8.1 The proposed voluntary severance terms are in accordance with pension regulations and are therefore legally compliant.

8.2 The voluntary redundancy process is handled in such a way as to minimise the risk of Employment Tribunal and breach of contract claims and no settlements will be paid unless an approved settlement agreement has been put in place.

9.0 Risk Management

9.1 To change current policies in the middle of a huge overhaul by the Government of public sector exit arrangements could lead to significant employee relations problems and confusion, especially when clarity on changes are likely to come forward by the Autumn of this year or sooner.

9.1 The Council has achieved major headcount reductions over the past six years and the approach of offering enhanced terms for voluntary redundancy has facilitated this change.

9.2 Further staffing reductions will be required to achieve the savings required over the next financial year which will be facilitated by continuing to have a clearly differentiated offer for voluntary redundancy.

10.0 Background

10.1 On 28th May 2012, Cabinet resolved that in relation to the Council's workforce change and severance/termination arrangements, a multiplier of 1.80 times would be applied to a week's pay up to a maximum of 50 weeks, with effect from 20 August 2012. These were reviewed in October 2013 and July 2014 and Staffing Committee deferred a further recommendation to retain these terms for a further period in January 2016 pending further clarity on government consultation on the Public Sector Exit Payment regulations and further regional comparison.

11. Regional comparison

11.1 Councils have three key discretions as to how they can manage voluntary redundancies, firstly the ability to pay up to 104 weeks pay, with the Council having elected to pay up to a maximum of 50 weeks. Secondly Councils can elect to base the payment on the employee's actual weekly wage, a statutory upper limit or to use an amount in between the two. The Council applies the actual weekly wage. Thirdly, the Council has the option to apply a multiplier to enhance the weeks pay calculation above the statutory formulae and the Council currently applies a 0.8 enhancement making a calculation of 1.8.

11.2 An action from Staffing Committee was to provide wider comparator information regarding Voluntary Redundancy payments. Drawing on an annual survey of all North West Councils by the North West Employers Orgainsation it can be seen that in relation to CEC policy to other Councils we are as follows in the two main areas of calculation of redundancy payments :-

- **Pay Calculator**

  Of the 31 Councils who responded all but three use the actual weeks pay for the redundancy calculation.

- **Multiplier**

  A number of councils (18) have now moved to the statutory formulae with no multiplier offered. Of those who do offer a multiplier the Council is mid range at 1.8 x on (voluntary redundancy only) with the highest at 2.2 x and lowest 1.4x.

11.3 Further information is provided in Appendix 1 which provides an overview of the results showing the position of all Councils that responded.

12. Public Sector Exit Payment legislation

12.1 There are currently three pieces of potential legislation at different stages of consultation which will directly impact on the Councils current and future approach to exit payments (further information is provided in Appendix 2).

1. Public Sector Exit Payment **Cap** Regulations 2016
   (1st October 2016 at the earliest)

2. Public Sector Exit Payment **Recovery** Regulations 2015
   (anticipated to be May 2016)

3. Wider **Reforms** to Public Sector Exit Payments
   (consultation ends 3rd May 2016)

12.2 The Exit Payment Cap and Recovery Regultions impact on high earners and their remains a lack of clarity on the detail and implementation dates which has a knock on effect to planning.

12.3 The wider reforms to Public Sector Exit Payments currently being consulted upon potentially will effect all staff and the Councils polcies on voluntary and compulsory redundancy, voluntary early retirement and efficiency. So far no implementation timetable has been published for this consultation so it could be into 2017 before legislation is published. However it is also possible that all changes are developed this summer and passed in the Enterprise Bill now proposed for 1/10/16.

13.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Rosie Ottewill
Designation: Organisational Development Manager
Tel No: 01270 685883
Email: rosie.ottewill@cheshireeast.gov.uk

Appendix 1 – North West comparison data for redundancy

<u>Summary of Calculation Data</u>

1. The vast majority of the 31 Councils who responded to the NW Employers survey use actual weeks' pay for calculating the redundancy payment (28). One council does use this calculator for voluntary redundancy and the statutory calculator for compulsory redundancy.

2. Of the 3 that don't :-
    - 2 use statutory calculation
    - 1 has a £1,000 per week max cap.

<u>Summary of multiplier payments</u>

<u>Statutory formula</u> = 18 councils

<u>Multiplier Used</u>

2.2 x = 3 (1 voluntary redundancy only)

2.0 x = 2 (1 capped at 52 weeks)

1.8 x = 1 (voluntary redundancy only CEC)

1.5 x = 3 (1 voluntary redundancy only)

1.4 x = 2

3 weeks p.a. up to 30 weeks max = 2

Appendix 2 – Summary of Public Sector Exit Payment Legislation

1. Public Sector Exit Payment Cap

In September 2015, the Government announced that it had decided to press ahead with its proposals for a £95,000 cap on the total value of payments made in connection with the termination of a public sector worker's employment. This cap will cover a broad range of circumstances, including both voluntary and compulsory termination of employment, and will affect most of the possible components of severance packages, including the cost of providing enhanced (unreduced) early retirement benefits.

On 3 November 2015, the Treasury published draft *Public Sector Exit Payment Regulations 2016* to implement its decision to impose a restriction on exit payments in the public sector. This regulation-making power will be added to the Act by the *Enterprise Bill 2015 – 16* that is currently before Parliament.

Source - Hymans Robertson Nov 2015

At the House of Commons committee stage for the Enterprise Bill in late February, the Government confirmed that the Exit Payment Cap will not now come into effect **until 1st October 2016** at the earliest, giving employers and employees time to prepare. The LGA remain in detailed discussions on the interpretation and effects of the proposed 'cap' and there are likely to be a number of adjustments or clarifications that will come through.

Source – NW Employers February 2016

On the 8th & 9th March the Enterprise Bill reached House of Commons, Report Stage and Third Reading. The LGA Briefing key messages report noted:-

- £95k cap would include cash lump sums, early access to unreduced pensions and pay in lieu of notice as well as non –financial and other benefits.

- Government plans to include provisions that will allow Authorities to waive the cap in certain circumstances. HM Treasury plan to issue guidance on this which may also be the subject to consultation.

- This cap would not just impact on higher paid managers but pension strain estimates examples show it could impact on long service mid ranking officers.

Source – LGA briefing paper –March 2016.

2. Public Sector Exit Payment Recovery

The Government has published draft Regulations to implement the powers included in the Small Business, Enterprise and Employment Act 2015 for the recovery of termination payments paid to high earning public sector employees.

Under the new rules, due to take effect in April 2016 (**now anticipated to be May 2016**), public sector employees will be required to repay a tapering proportion of a 'qualifying exit payment', if they return to the public sector within a period of 12 months.

A qualifying exit payment will include payments made as a consequence of termination for any reason, including voluntary or compulsory redundancy, and whether or not paid under the terms of a settlement agreement. It will also apply to employer-funded pension top-up payments made under the Local Government Pension Scheme. It will not apply to contractual entitlements, such as accrued holiday entitlement or pay in lieu of notice, or payments made in respect of incapacity or death as a result of accident, injury or illness.

The measures will apply to all bodies within the ONS definition of 'public sector', other than those granted an exemption. Exempted bodies include Government-owned banks, public broadcasters such as the BBC, the armed forces, housing associations and national museums.

The draft Regulations include two important revisions to the Government's original proposals:

1. The new rules will apply to departing public sector employees earning £80,000 or more (not £100,000 as originally proposed). These employees represent the top 2% of earners in the public sector.
2. The repayment provisions will apply when an individual is employed or engaged by any public sector body in the period of 12 months following termination (not only if the employee is returning to the same 'sub-sector', as originally proposed).

Public sector employers will be required to keep detailed records of qualifying exit payments and inform departing employees of their obligation to repay it, if they are re-employed within 12 months. In addition, new employers will be required to wait until repayment arrangements have been finalised before the employee can start work.

Source Birketts December 2015, and LGA Advisory Bulletin No 634 – February 2016

3. <u>Wider Reforms to Public Sector Exit Payments</u>

The Spending Review 2015 announced the government's intention to consult on cross-public sector action on exit payment terms, to reduce the costs of redundancy pay-outs and ensure greater consistency between workforces.

The government is consulting on options to reform public sector exit payment terms to "ensure greater consistency, fairness and sustainability in the provision of public sector compensation".

Once the consultation closes on the 3 May 2016 the government will consider all replies and publish a government response document that will set out how the government intends to proceed.

The consultation considers options for:

- the setting of a maximum tariff for the calculation of exit payments (a maximum of 3 weeks per year of service has been suggested);
- capping the maximum period over which salary can be used when calculating redundancy payments (15 months has been suggested);
- setting a maximum salary on which exit payments can be based (£80,000 has been suggested, as per the NHS scheme);
- capping or removing the ability for employers to fund early release of pension benefits on redundancy, or increasing the minimum age at which an employee can receive such payments from an employer (5 years from an individual's normal pension age has been suggested).

Most of the above suggestions, if taken forward by Government could have implications for local government employers, who would be required to reconsider their policies around workforce management and termination policies.The full extent of required changes will not be known until detailed proposals are approved and released.

The LGPS regulations will also require amendment to reflect any changes to remove or restrict the current automatic right to LGPS benefits for those being made redundant from age 55.

Source – HM Treasury consultation document – February 2016