



POLICY AND RESOURCES SCRUTINY COMMITTEE – 5TH AUGUST 2014

SUBJECT: WORKFORCE FLEXIBILITIES

REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND SECTION 151 OFFICER

1. PURPOSE OF REPORT

- 1.1 This report is seeking the views of Members of Policy and Resources Scrutiny Committee on the draft policy details and options for a range of schemes to allow workforce flexibility to meet the challenges of the Medium Term Financial Plan (MTFP), prior to referral to Cabinet.

2. SUMMARY

- 2.1 On the 30th April 2014, Cabinet gave permission to develop detailed proposals for a range of workforce planning tools. These proposals are to assist the Council, Members and Officers with managing the challenges of the MTFP. Members will also be aware from the report to Cabinet on 16th July 2014, that the financial predictions previously provided by Welsh Government have significantly worsened. The impact is likely to be that the Council will need to downsize the workforce in greater numbers than previously estimated and in a shorter timescale.
- 2.2 Contained within the attached report and documents are draft proposals for the introduction of a Flexible Retirement Scheme, Voluntary Severance Scheme, Redundancy Scheme (which includes both Voluntary and Compulsory Redundancy situations), along with the Early Retirement Scheme, which Committee considered on 3rd June 2014.
- 2.3 It should be noted that Wales Audit Office has conducted a recent review of severance packages and payments. There is a duty on the Council as a public body to ensure that the severance arrangements and costs are proportionate and defensible against public scrutiny. There is also the need to ensure that the costs of severance (by whichever means) are not so excessive as to necessitate the departure of greater numbers of employees in order to recover the costs.

3. LINKS TO STRATEGY

- 3.1 These workforce measures link to the People Management Strategy and therefore to all other strategies, including all equality strategies, policies and procedures, which rely on employees to deliver the strategy and service provision.
- 3.2 Being able to balance the Council's budget to meet the challenges of the MTFP will inevitably require a reduction in the workforce.
- 3.3 Members are reminded of the strategies such as the Passport Programme to address the

demographic profile of the Council with 30% of employees being over 50 years old. (See Appendix 1).

4. THE REPORT

- 4.1 Members will be aware that Cabinet on 30th April 2014, gave permission to develop detailed proposals for a range of workforce planning tools to assist with managing the MTFP. The intended date of implementation for these schemes is 1 January 2015.
- 4.2 This Report and the attached Appendices set out proposals for the introduction of a Flexible Retirement Scheme (Appendix 3), Voluntary Severance Scheme (Appendix 4), Redundancy Scheme (Appendix 5) along with the Early Retirement Scheme (Appendix 6), which was considered previously by Committee on 3rd June 2014.
- 4.3 In addition to the above, the 85 Year Rule arrangements can still be used to provide flexibility within the workforce. However, this option will begin to taper off from 2016 and will be removed totally in 2020. The amount of actuarially reduction in 85 year rule cases is specific to each employee, based on their age and length of service. There may be a cost to the Council in 85 year rule cases. This is again dependent on the individual's personal circumstances.
- 4.4 When considering this report and the options in the schemes, Members are reminded to review the demographic profile of the workforce in Appendix 1 and consider the potential opportunities this may create in the light of the Medium Term Financial Plan requirements.
- 4.5 Those employees who are not members of the Local Government Pension Scheme (LGPS) would not benefit from the parts of the schemes where there is an enhancement to pension. However, they will be able to access the voluntary severance scheme and they will also be entitled to receive a payment in accordance with the proposed Redundancy Scheme.
- 4.6 The introduction of the proposed schemes will be underpinned by a business case methodology i.e. each application will need to be supported by a business case for each individual employee. The business case will ensure that careful consideration is given to whether the service can still be effectively delivered if the business case is agreed and whether the savings can be achieved in a short timescale in order to balance the budget of the Authority. Consideration will also need to be given as to whether the service can make the business case to allow an employee to leave, when there are pension costs attached which can be significant.
- 4.7 The Council's recognised Trade Unions have been consulted and provided with the same information as the Scrutiny Committee on the schemes. There is broad agreement on the implementation of the schemes, but there are a number of specific details in the schemes on which recommendations from Members are sought prior to the referral to Cabinet.
- 4.8 The following paragraphs summarise the key areas where Elected Members' views are sought.

Flexible Retirement Scheme (Appendix 3)

Principles

- 4.9 Members have previously considered and supported the development of a Flexible Retirement Scheme. The Flexible Retirement Scheme will allow an employee to reduce their hours and / or their grade by an agreed amount and draw part, or all of their pension in the final year(s) of their employment. Whether the pension is actuarially reduced will be dependent on the employee's age and length of service. When the employee takes an actuarial reduction, then there could still be a small cost to the Authority. However, this is

significantly less than paying a pension 'top up'. Three examples of flexible retirement scenarios can be seen in Appendix 2 regarding a reduction of 20% of hours on a full time equivalent salary.

- 4.10 It is recognised that due to the nature of how Flexible Retirement works, it will have limited impact in achieving the savings required in the MTFP. It is recognised, however, that where it is necessary for services to meet ongoing efficiency savings, this may be a viable option that will contribute to the saving, as Flexible Retirement is a means of supporting workforce planning and ensuring key skills, knowledge and experience are not lost when the employee retires.
- 4.11 There is potential for the Flexible Retirement scheme to be considered to be discriminatory as it applies only to employees over 55. The availability of access to pension benefits derives from the Local Government Pensions Regulations and therefore the Council will make all reasonable efforts to offer its employees a flexible benefits package that is the most advantageous possible and, on the balance of probabilities, the package would have the desired beneficial effect on recruitment and retention. The arrangements could not be achieved in any less discriminatory way.

Options for Members' Consideration and Recommendation.

Time periods

- 4.12 A recommendation is sought on the flexible retirement period and whether this should be time limited.
- 4.13 If the period of flexible retirement is not time limited, an employee may need to be made redundant at a later date. This would incur further costs to the Council in terms of possible pension top up and redundancy pay.
- 4.14 Should there be a recommendation to time limit the flexible retirement period then a subsequent recommendation on the length of that period is required. If the period of time can be agreed at the beginning of the flexible retirement period, then the handover can be structured. Without an agreed timeline the service area will be unable to plan the workforce effectively, ensure knowledge and skills are passed effectively to other employees and identify when potential savings can be made.
- 4.15 Therefore, it is recommended that the period of flexible retirement is time limited with the maximum period an employee can work flexibly being 6 or 12 months. There is also the opportunity for this to be a longer time period. Discussions with the Trade Unions have identified that 6 months would be reasonable, having regard to the revised budgetary position that the Council is facing. Officers support this view and both parties feel that it should be possible to pass on the skills and knowledge of the postholder to a successor within a 6 month time frame. It would also be more effective in the context of the MTFP to support the Council to achieve the required savings targets within a limited timeframe.
- 4.16 However, Members may wish to consider whether there is a need to include an option to extend the period of flexible retirement by a further 3 or 6 months in exceptional cases.

Reduction in Contract Hours

- 4.17 A further element of the Flexible Retirement Scheme that needs to be considered is a reduction in hours. Recommendations are therefore sought on the percentage of hours reduction.
- 4.18 The reduction in hours could be a minimum of 20%, 40% or 60%, for example. For employees working full time this would be one, two or three day reduction. The recommendation from officers, with the support of the Trade Unions, is that this should be a

minimum of 40% of the employee's contractual hours.

Grade

- 4.19 A further consideration within the Flexible Retirement Scheme is the opportunity to reduce the grade of employees instead of or in addition to a reduction in hours. In terms of grade, consideration needs to be given to a permitted maximum level of reduction, for example, one, two or more grades. The recommendation to Members, endorsed by the Trade Unions is a reduction of two grades without the need for a reduction in hours. This reduction of grade will not be subject to the Council's salary protection as per the Redeployment Policy.

Voluntary Severance Scheme (Appendix 4)

Principles

- 4.20 Members will recall that they have previously agreed to a Voluntary Severance Scheme being developed at the Scrutiny meeting held on 4 December 2013, when considering the workforce strategies for the Medium Term Financial Plan. The proposed scheme at Appendix 4, will allow employees to voluntarily leave the employment of the Council with a lump sum payment as compensation for their employment ending. Any employee applying to leave under this Scheme will not enter the Council's Redeployment Pool, thus reducing the costs to the Council. There will be no pension release costs to the Council as the employee will not have been declared redundant. (A declaration of redundancy triggers pension release to any LGPS member over 55 years of age, which the council has to fund). Employees aged 55 and over are able to access their pension, but this may be on an actuarially reduced basis, in accordance with the Pension Regulations.
- 4.21 The proposed Voluntary Severance Scheme is likely to provide the quickest opportunity for services to make budgetary savings in accordance with the MTFP. The business cases will need to cover the cost of the severance payment within the year of the employee leaving. However, any decisions with regard to voluntary severance will need to be balanced with the ability to continue to provide a required level of service.

Options for Members' Consideration and Recommendations

Level of Severance

- 4.22 A recommendation is sought on what level of severance payment should be offered within the scheme. Options include whether this payment should be a percentage of annual salary e.g. 50%, 60% or 70% etc, or an alternative value. It should be noted that the payments may be made gross it is compensation for loss of office rather than a Payment in Lieu of Notice. There is a £30,000 exemption available for termination payments with regard to the payment of Income Tax and National Insurance. A balance is needed between making the payment attractive enough to encourage volunteers but also it being affordable to the Council, whilst supporting the continuation of service delivery.
- 4.23 From an officer perspective, the recommendation would ideally be a voluntary severance payment of 50% but a maximum of 60% of an employee's salary could still achieve the MTFP savings. The Trade Union perspective would be to secure the best outcome for their members but there is an understanding by the Trade Unions of the unprecedented financial challenges the Authority faces.
- 4.24 The levels suggested above i.e. 50% or 60%, would allow savings to be delivered within a year of being agreed. This scheme could provide the most opportunities to downsize the organisation more quickly to meet the MTFP requirements.

Maximum Payment

- 4.25 A further recommendation is sought from Members as to whether to cap the voluntary severance payment, e.g. the maximum payment to be held at the top of the Hay Grade C scale i.e. £53,533. The practical effect of a cap of this nature would result in any officers employed on a higher grade would have a maximum of the percentage agreed under the scheme paid at the top of the Hay C grade. This could avoid a potential criticism where this could be viewed as a benefit to more Senior Officers. This is supported by the Trade Unions.

Redundancy (Appendix 5)

Principles

- 4.26 If other options of early / flexible retirement and voluntary severance are exhausted, then the Council is in the position of having to consider invoking a redundancy situation. The Redundancy Scheme will give employees the opportunity to volunteer for redundancy rather than automatically invoking a formal selection process for compulsory redundancy. This may in turn allow savings to be made in a more timely manner and also limit the numbers of compulsory redundancies.
- 4.27 Employees are at risk of compulsory redundancy if a service area has to downsize significantly and there are not enough volunteers to leave under one of the other schemes or if a decision is made to no longer deliver a service and those employees cannot be redeployed.
- 4.28 Members should note that whether employees volunteer for redundancy or are made compulsory redundant, in accordance with the Council's Scheme, they currently attract the same level of payment.
- 4.29 The redundancy payment is based on the Statutory Redundancy Calculator and depends on the employee's age and service. For employees aged 55 and over, their pension would be automatically released at an unreduced rate, which is a cost to the Council and they would also receive a payment up to a maximum of 30 weeks at their weekly occupational salary level. For employees under 55 years of age, there are no pension release costs and the redundancy payment is made based on the Statutory Redundancy Calculator multiplied by two up to a maximum of 60 weeks at their weekly occupational salary level
- 4.30 The wording of the payments agreed by the Council in 2010 was not clear in terms of the amounts paid to those employees who were over 60 and can access their pension at an unreduced rate, without a cost to the Authority. Members should note the wording within the proposed scheme regarding single and double redundancy has been clarified to ensure that it complies with the Equality Act 2010 and to make it easier for employees to understand. The Trade Unions are supportive of this approach.
- 4.31 It is important to bring to Members attention that in section 193 of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that depending on the number of employees to be made compulsorily redundant, the Council needs to notify the Redundancy Payments Service and undertake a full redundancy consultation exercise. This would impact on the timelines of how quickly the savings could be achieved. If between 20 and 99 employees are being made compulsory redundant, the minimum consultation period is 30 days. For 100 employees or more, the minimum consultation period is 45 days.
- 4.32 Prior to being made compulsory redundant, an employee will also have up to 24 weeks in the Council's Redeployment Pool depending on their length of service, so these costs would need to be factored into any business case.
- 4.33 The Redundancy scheme could be considered to be discriminatory as it applies to those who are able to access pension benefits, which is based on age. However, the Council considers

that the scheme is a proportionate means of achieving a legitimate aim. The legitimate aims of the Council are staff retention, workforce planning and dignity as set out in the Council's People Strategy and Strategy for Older People.

- 4.34 As with the Flexible Retirement Scheme, the availability of access to pension benefits derives from the Local Government Pensions Regulations and therefore the Council will make all reasonable efforts to offer its employees a flexible benefits package that is the most advantageous possible and, on the balance of probabilities, the package would have the desired beneficial effect on recruitment and retention. The arrangements could not be achieved in any less discriminatory way.
- 4.35 The Council is also mindful that employees who are able to access their pensions would receive a windfall as they would otherwise receive both their pension and a contractual redundancy payment (this follows the Employment Appeal Tribunal case of *Loxley v BAE Systems* UKEAT/0156/08.) The Council has a legitimate aim of ensuring that older employees did not receive more than they could have earned had they remained employed until retirement age (this is in accordance with the case of *Kraft Food UK Ltd v Hastie* UKEAT/0024/1.)
- 4.36 There has been some debate with the Trade Unions recently as to the Redundancy Selection Criteria agreed within the Council. It would be helpful to review this at this time with the Trade Unions to clarify their concerns and negotiate an agreed criteria to propose to Cabinet.

Options for Members' Consideration and Recommendations

- 4.37 A recommendation is sought from Members to support the revised wording in the scheme with regard to the payments to those employees who are over 60 and can access their pension at an unreduced rate, without a cost to the Authority.
- 4.38 A recommendation is sought from Members to support consultation with the Trade Union to clarify their concerns with regard to the Redundancy Selection Criteria and negotiate an agreed criteria to propose to Cabinet.
- 4.39 Members may also wish to consider whether they would like officers to consult with the Trade Unions and draw up options for alternative levels of payment for redundancy to support the MTFP. This would involve a change to employee's terms and conditions.

5. EQUALITIES IMPLICATIONS

- 5.1 There are a number of Equalities implications that must be recognised in order for a full and proper consideration of the options to be made. It is likely that despite these issues, difficult decisions will have to be made, however these implications must be recognised and understood as part of the process.
- 5.2 There is potential for certain elements of the proposed schemes to be considered as discriminatory, such as the flexible retirement scheme only applying to those employees over 55, the time limit on the flexible retirement scheme and the capping of voluntary severance payments at a certain amount. However, the proposed schemes are a proportionate means of achieving legitimate aims of the Council, specifically in this case staff retention, workforce planning and dignity as set out in the Council's People Strategy and Strategy for Older People.
- 5.3 The proposed schemes that link to the Council's strategies to address the skewed demographic profile of the Council with 30% of employees being over 50 years old could be considered discriminatory. However, the proposed schemes are a proportionate means of achieving other legitimate aims, as set out in the Council's People Strategy and Children and Young People's Plan as well as Equality Objective 6 of the Equality and Welsh Language

Objectives and Action Plan 2012-2016 to create a diverse workforce. There is a specific public interest in the Council ensuring this diversity, as it is one of the largest employers in the area.

- 5.4 The Senior Policy Officer (Equalities and Welsh Language) and HR officers have ensured that equalities considerations have been taken into account when drafting or revising the policies, and amendments/additions made where relevant and appropriate. Each business case underpinning the scheme will be assessed separately and the equality implications considered on a case by case basis.

6. FINANCIAL IMPLICATIONS

- 6.1 Whilst there are no quantifiable financial implications for the Authority in introducing the proposed schemes, there will be financial implications in individual cases. A common feature of the schemes proposed for introduction, are that viable and robust business cases in the Authority's interest would be required, prior to approval. The key features being the level of cost and the payback period to realise the financial saving.

7. PERSONNEL IMPLICATIONS

- 7.1 There are significant personnel implications. The introduction of the schemes will have personnel implications for the Authority and employees as laid out in the scheme details. The additional flexibility of such schemes will assist with the need to reduce headcount and help meet the requirements of the Medium Term Financial Plan.

8. CONSULTATIONS

- 8.1 Responses to date are reflected in the report. The Trade Unions have been consulted on the workforce strategies for the Medium Term Financial Plan and they have agreed to the broad principles of the schemes. Members are advised that this is an ongoing consultation process with the Trade Unions and further consultation will take place with them following recommendations from Members.

9. RECOMMENDATIONS

- 9.1 It is recommended that Policy and Resources Scrutiny Committee note the content of this report and provide their views on the options outlined in the report in order to inform the consultation process prior to the final schemes being drawn up and reported to Cabinet on 29 October 2014.
- 9.2 The recommendation from officers based on the consultation responses including the Trade Unions is:
- Flexible Retirement**
- 9.3 In line with paragraph 4.15, the recommendation for the period of flexible retirement is 6 months (with a 3 month extension in exceptional circumstances.)
- 9.4. In line with paragraph 4.18, the recommendation with regard to the reduction in hours is a minimum of 40% of the employee's contractual hours.
- 9.5 In line with paragraph 4.19, the recommendation is a reduction of two grades without the need for a reduction in hours.

Voluntary Severance

- 9.6 In line with paragraph 4.23, the recommendation is ideally a voluntary severance payment of 50% of an employee's salary with the cap set out at paragraph 9.7 below. (Members should note that 60% is achievable and preferred by Trade Unions as set out in 4.24)
- 9.7 In line with paragraph 4.25, the recommendation is to cap the voluntary severance payment at the top of the Hay Grade C scale i.e. £53,533.

Redundancy

- 9.8 In line with paragraph 4.37, a recommendation is sought from Members to support the revised wording in the scheme with regard to the payments to those employees who are over 60 and can access their pension at an unreduced rate, without a cost to the Authority.
- 9.9 In line with paragraph 4.38, a recommendation is sought from Members to support consultation with the Trade Union to clarify their concerns with regard to the Redundancy Selection Criteria and negotiate an agreed criteria for reference to Cabinet.
- 9.10 In line with paragraph 4.39, Members may also wish to consider whether they would like officers to consult with the Trade Unions and draw up options for alternative levels of payment for redundancy to support the MTFP.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To provide the Council with additional flexibility to manage the workforce to support the achievement of the MTFP.

11. STATUTORY POWER

- 11.1 Local Government Pension Scheme Regulations 2014.
Local Government Act, 1972.

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Appendices:-

Appendix 1 Passport Programme
Appendix 2 Flexible Retirement Scheme Example
Appendix 3 Flexible Retirement Scheme
Appendix 4 Voluntary Severance Scheme
Appendix 5 Redundancy
Appendix 6 Draft Early Retirement Scheme