

HAMPSHIRE COUNTY COUNCIL REPORT

Committee/Panel:	Employment in Hampshire County Council Committee
Date:	11 July 2018
Title:	Redundancy Policy
Report From:	Director of Corporate Resources

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1. Executive Summary

1.1 This paper provides an update to EHCC on an amendment to the Council's redundancy policy to bring the calculation period for redundancy pay into line with the statutory requirement.

2.0 Background

2.1 Under the Council's redundancy policy redundancy pay is largely calculated as per the statutory calculation. However, for the purposes of the calculation, the Council offers a week's pay based on gross contractual pay and does not apply the statutory cap on a week's pay (currently £508). The Council's policy is intended to ensure that staff receive at least the statutory minimum redundancy pay, and in many cases, more.

2.2 Average gross weekly pay includes basic salary as well as any contractual payments claimed and contractual recurring payments, statutory payments (i.e. statutory sick or maternity pay) as well as contractual market supplements or acting-up allowances. It does not include claimed overtime or additional hours.

2.3 The Council's current redundancy policy states that a week's pay is based on the average gross weekly pay over the 3 months prior to the employee's actual leaving date. This would include the employee's final salary.

2.4 **However, current practice is to calculate the average gross weekly pay over the 3 months up to and including the penultimate salary and not to include their final salary in the redundancy pay calculation. This ensures that redundancy pay can be made as part of an employee's final salary payment as otherwise it would be delayed and have to be paid in the month following termination of employment.**

2.5 **The statutory requirement as set out in the Employment Rights Act 1996 is to calculate the average gross weekly pay over the 12 weeks prior to their statutory dismissal date.**

January					February					March				April			
Week 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	



Policy: Average of 3 months prior to leaving date. In this example this means a weeks' pay is calculated as an average of salary paid during the above period, ending 30 April.



Current practice: Average of 3 months up to and including the penultimate leaving month, but excluding the final salary month. In this example this means a weeks' pay is calculated as an average of salary paid during the above period, ending 31 March.



Employment Rights Act: Average of 12 weeks' prior to statutory notice. In this example this means a weeks' pay is calculated as an average of 12 weeks' salary paid between 10 January and 3 April when 4 weeks' statutory notice commences.

Diagram 1: An example of the difference between the policy, current practice and Employment Rights Act in how an average is calculated to determine a "week's pay". In this example the employee is entitled to 4 weeks' statutory notice for a redundancy dismissal on 30 April.

2.6 There are two types of notice period: statutory and contractual. Statutory notice is the minimum legal notice that can be given. Employers should give the employee:

- one week's notice if the employee has been employed by the employer continuously for one month or more, but for less than two years
- two weeks' notice if the employee has been employed by the employer continuously for two years, and one additional week's notice for each further complete year of continuous employment, up to a maximum of 12 weeks. For example if an employee has worked for 5 years then they are entitled to 5 weeks' statutory notice.

2.7 The statutory redundancy payment is currently capped at £508 a week. The payment cap is reviewed annually and in 2006 the redundancy payment cap was only £280.

2.8 It has been the Council's practise to calculate the average gross weekly pay as set out above, since at least 2007. Whilst we aren't certain as to the reason for this it is probable that this methodology was based on previous terms and conditions of employment or the limitations of the Council's processes and systems at that time. Irrespective of this, as the redundancy cap was relatively lower than it is today, the Council could be certain that contractual redundancy pay always met or exceeded the statutory requirement regardless of the period used to calculate the average gross

weekly pay.

- 2.9 Increases to the redundancy pay cap since 2007 means that we can no longer be confident that an individual will continue to receive at least the statutory minimum redundancy payment as a result of the period used to calculate their average weekly gross pay.

3.0 Policy Amendment

- 3.1 In order to ensure the policy is in line with obligations under the ERA (1996) the Council will be amending its redundancy policy as follows:

- 3.2 **Existing wording:** A week's gross contractual pay is determined by the average gross weekly pay over the 3 months prior to the employee's actual leaving date.

New wording: The period used for calculating a week's gross contractual pay (as defined in this Policy) is determined in accordance with the statutory method used for calculating redundancy pay. , To be clear, an employee's gross contractual pay will continue to be used in the calculation

- 3.3 The Council's redundancy how-to-guide which provides detailed advice to managers and employees on how to effect the policy will also be updated to state that the statutory period is the 12 weeks prior to date on which statutory notice would have been given. The Council will amend its processes and systems as appropriate.

The Council does not propose to make any amendments to the elements of salary and allowances that are included in the calculation of average gross weekly pay.

4.0 Benefits

- 4.1 Amending the policy to comply with the statutory obligation ensures that there is no risk that an employee will receive less than statutory minimum redundancy pay (e.g. as a result of fluctuations to their pay in the run up to a redundancy).
- 4.2 The new policy and process will mean that employees will know the actual redundancy pay that they are going to receive significantly earlier than they do at present as at the moment this is not confirmed until their final month of employment. This will enable them to make their future plans confident of the payment that they will receive on termination of employment.
- 4.3 The average gross weekly pay is more likely to reflect an employee's true earnings as the business might reduce operational activity or service delivery in the final months prior to termination of employment as part of its

transition plans to new ways of working which would have a knock-on effect on an individual's pay. This means an individual may be better off as a result of this policy amendment.

- 4.4 The Council's practice will be fully compliant with its obligations under the ERA (1996).

5.0 Next Steps

- 5.1 At the time of writing, consultation is taking place with Trade Unions and it is on the agenda for the next JCG meeting which is scheduled for the 11th July. The intention is to implement the updated policy as soon as possible following consultation allowing for the necessary changes to the Council's process and procedure.
- 5.2 Transition arrangements will be put into place for any employees due to leave under redundancy in the 3 months following implementation of the new policy to ensure that they do not receive any less than they would have received as a consequence of this policy change

6.0 Recommendations

- 6.1 EHCC is asked to approve the amendment to the Council's redundancy policy to bring the calculation period only for redundancy pay into line with statutory requirements.(as expressed in paragraph 3.2, above).

**CORPORATE OR LEGAL INFORMATION:
Links to the Corporate Strategy**

These government proposals do not link to the Corporate Strategy but potentially impact the County Council's workforce strategy.

Other Significant Links

Links to previous Member decisions:

Title

n/a

Date

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None.

IMPACT ASSESSMENTS

1. Equality

1.1 The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2 Equalities Impact Assessment:

It is not envisaged there will be any equalities impact.

2. Impact on Crime and Disorder:

2.1 Not applicable.

3. Climate Change:

(a) How does what is being proposed impact on our carbon footprint / energy consumption?

Not applicable.

(b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Not applicable.