

Early Termination of Employment Policy and Arrangements

1. Introduction

- 1.1 This Policy sets out the Council's approach to the early termination of an employee's contract of employment. For the purposes of this Policy, termination occurs where an employee's employment ceases as a result of actions taken by the Council or in response to a request made by an individual employee.
- 1.2 This policy has been developed with due consideration given to the requirements of:
- Local Government (Early Termination of Employment Discretionary Compensation) (England and Wales) Regulations 2006.
 - Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007
 - Local Government Pension Scheme (Admin) Regulations 2008 (regulation 66).
 - The Local Government Pension Scheme Regulations 2013
- 1.3 In formulating this Policy, the Council has given consideration to the extent to which it may exercise its discretionary powers, with appropriate safeguards to prevent a serious loss of confidence in the public service, and has satisfied itself that the policy is workable, affordable and reasonable having regard to the foreseeable costs.
- 1.4 The Council's view is that in relation to the early termination of employment this action should be seen as an exception rather than a norm, although it recognises that there may be circumstances where early termination of employment is unavoidable, and circumstances where early termination may benefit the Council and be acceptable to the employee.

2 Resignation

- 2.1 An employee of the Council may exercise their contractual right to resign at any time by giving proper notice under the contract of employment. Once a lawful resignation has been given it cannot be withdrawn other than with the Council's express permission or where the resignation came in the heat of the moment and was retracted quickly.

3 Retirement (Local Government Pension Scheme Membership)

- 3.1 The normal retirement age for Local Government Pension Scheme members is now aligned to the employee's individual State Pension Age (normal retirement age). If an employee intends to leave the Council's employment at normal retirement age, they are required to notify the Council of their intention to retire in line with their required contractual notice period. When a member reaches normal retirement age, an immediate pension becomes payable once the employee has left employment.
- 3.2 A member of the LGPS may retire before normal retirement age, but may be subject to reduction to their pension benefits (see early retirement section).
- 3.3 Employees will continue to accrue service-related benefits after their normal retirement age as long as they remain in employment with an organisation that is a member of the LGPS.

However, regulation 17(4) of the LGPS Benefit Regulations requires that a scheme member's pension must come into payment no later than the day before the member's 75th birthday.

4 Early Retirement with Reduced Pension Summary

- 4.1 Under LGPS Regulations, on leaving employment, employees can elect to receive their pension benefits from age 55, provided that they have at least 3 months membership of the pension scheme.
- 4.2 From age 55 employees can access their pension benefits without the Council's consent.
- 4.3 If the employee elects to receive their benefits before their normal retirement date the benefits will be reduced, to reflect the costs of the pension coming into payment early, subject to any transitional protection arrangements that may be applicable.
- 4.4 An employee considering early retirement can obtain detailed advice from "Your Pension Service" Helpline on 01772 530530 or by email to pensions.helpdesk@lancashire.gov.uk

5 Ill-Health Retirement

- 5.1 If, due to an employee's ongoing ill health, the Council has no alternative but to terminate an employee's contract of employment, he / she may request Ill Health Retirement, under the provisions of the Local Government Pension Scheme. In all cases the Council will follow the procedures defined by the LGPS regulations.

6 Redundancy

- 6.1 Under s.139 of the Employment Rights Act 1996, an employee is dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:
 - The fact that the employer has ceased or intends to cease to carry on the business for the purposes for which the employee was employed, or to carry on that business in the place where the employee was so employed, or
 - The fact that the requirements of the business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind, in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.
- 6.2 The Council recognises that, on occasion, policy decisions will necessitate a reduction in the number of its employees below a level that can be achieved through natural turnover. In such circumstances, the Council will take all reasonable steps to avoid compulsory redundancy. The Council's Redeployment Policy is particularly relevant in this respect and should be read together with this Policy.

7 Redundancy Pay

- 7.1 Regardless of whether an employee is entitled to receive their pension or not, they are entitled to receive a compensatory lump sum payment in cases of redundancy, where they meet the statutory arrangements for a redundancy payment.
- 7.2 Under the Employment Rights Act 1996, an employee dismissed due to redundancy after having completed at least two years' continuous service with an employer is entitled to a redundancy payment.

8 Statutory Redundancy Pay Calculations

8.1 The Employment Rights Act 1996, section 162 sets out how a redundancy payment is calculated. In summary this is:

- half a week's pay for each year of employment up to the age of 21
- one week's pay for each year of employment in which the employee was aged between 22 and 40; and
- one and a half weeks' pay for each year of employment in which the employee was aged 41 or over.

The maximum number of years of employment that can be taken into account is 20. The maximum weeks' pay is a statutory calculation, that is increased annually in line with the Retail Prices Index (RPI), under the automatic indexation provisions of the Employment Relations Act 1999.

8.2 The Council will calculate the redundancy pay for an employee, subject to compulsory redundancy, by using the national statutory formula. Any compulsory redundancy payment will be capped at the statutory maximum applicable at the time of dismissal.

9 Calculation of Continuous Service

9.1 For the purpose of the calculation, continuous employment will be the aggregation of all continuous local government and related employment defined within the Redundancy Payments (Continuity of Employment in Local Government etc.) (Modification) Order 1999 (as amended).

10 Voluntary Redundancy (VR)

10.1 Under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) (Miscellaneous) Regulations 2006 the Council may:

- calculate redundancy pay on actual weekly pay rather than the statutory amount
- enhance the compensation payment (Redundancy Pay) up to a maximum of 66 weeks

The Council will therefore exercise its discretion in relation to voluntary redundancy (VR) by:

- using the employee's normal weekly pay to calculate a VR compensation payment
- using the statutory formula for the calculation of applicable weeks (as detailed in para 8.1 above)
- capping the maximum VR compensation payment at the statutory maximum redundancy compensation payment multiplied by 2.2.

10.2 The Council will always seek to mitigate the impact of any redundancy situation by endeavouring to redeploy displaced employees to other suitable employment within the Council or by seeking volunteers, before any compulsory redundancies are considered.

10.3 Consultation documentation and communications will identify the posts, which it is proposed will be disestablished as part of any restructure.

10.4 The arrangements which relate to a request for volunteers will be set out in the consultation

arrangements relating to the relevant change/restructure taking place.

- 10.5 The management and administration of redundancies will be carried out in such a way to ensure there is an objective, fair and non-discriminatory approach in place that is applied consistently to workforce reduction. This includes circumstances where there is a fair selection for voluntary redundancy in an effort to limit compulsory redundancies.
- 10.6 The arrangements below outline the main criteria for VR selection. Managers will define the specific criteria required for the service area in order to release individuals under VR, whilst ensuring limited disruption for the service area and to deliver future Council priorities.

Service Managers and HR must ensure that any volunteer is aware that:

- there is no guarantee that a Voluntary Redundancy will be granted
- business needs of the Council take priority
- volunteers will continue to work until a release date is agreed by their manager.

- 10.7 Consideration will only be given to volunteers for redundancy if this is not detrimental to the Council. The decision to accept applications for voluntary redundancy will be based on the need to ensure that there is a balanced workforce with the requisite skills to meet future business needs.
- 10.8 The terms of the Redeployment Policy will not apply to any employee who applies for VR. Further, an employee who has unsuccessfully sought redeployment in a redundancy situation will not subsequently be eligible to apply for voluntary redundancy.
- 10.9 If an application for voluntary redundancy is granted, the employee will receive an enhanced redundancy payment. This will be calculated using the national statutory redundancy formula, with the statutory maximum figure for weekly pay replaced by the employee's actual weekly pay. The total of this calculations will be multiplied by 2.2 to produce a voluntary redundancy payment.
- 10.10 Any enhanced redundancy pay **will not** exceed the sum of the maximum statutory redundancy pay multiplied by 2.2.

(For example: as at 1 February 2015 this was £13,920 x 2.2 = £30,624).

- 10.11 If an employee accepts voluntary redundancy and therefore benefits from an enhanced redundancy payment, they will not be eligible to appeal against the selection process for voluntary redundancy.

11 Redundancy or Efficiency Terminations - Employees aged 55 and over (Pension Issues)

- 11.1 In addition to the compensation payments specified above, for termination of employment on the grounds of redundancy (or efficiency), employees aged 55 or over, who have at least three months' membership of the Local Government Pension Scheme, will receive immediate payment of an unreduced pension and lump sum based on their accrued contributory service at the date their employment is terminated.

12 Consultation

- 12.1 Before any decisions are taken which may affect the ongoing employment of any employee appropriate consultation will take place with both the affected employee(s) and the relevant trade union(s). The communication during the consultation process is designed to ensure the Council fully explains how any individual employee and/or groups may be affected and the timescale of any proposed actions.

12.2 The Service Manager must be able to demonstrate that the selection for redundancy is made on the basis of objective criteria that is reasonable, fair and consistently applied. Once provisional selections for redundancy have been made, individual consultation with each employee will be arranged. At these meetings each employee has the right to be accompanied by a trade union representative or work colleague.

13 Right of Appeal against selection for Redundancy

13.1 As a means of maintaining an open dialogue during a consultation period, there is no provision for an employee who has been provisionally identified as displaced by a restructure to raise a grievance or appeal at this stage, based on the employee's view that they:

- disagree with the proposals which have been developed; or
- the provisional selection arrangements; or
- the pool of potentially at risk employees.

For the process of consultation to be meaningful, it is expected that if there are issues to be raised then these would form part of the dialogue between management, affected employees and, where appropriate, their trade union representatives.

13.2 However once an employee has been selected for redundancy and has been formally issued with notice of their selection for redundancy, and is therefore facing redeployment or dismissal, they do have the right to appeal the decision. Such appeals will be to the Council's Personnel Committee. The grounds for appeal are either that:

- the employee is dissatisfied with the way in which the Council has applied its redundancy selection criteria;

Or

- the employee believes that he/she has been unfairly disadvantaged by the selection criteria or not given a fair opportunity to put forward representations.

14 Termination in the Interests of efficiency

14.1 Early termination of employment in the interests of the efficient exercise of the Council's functions does not require a redundancy situation to exist, and does not require that a post be deleted from the Council's Establishment. It is impossible to define conclusively "the interests of efficiency". However, this might include circumstances where changes beyond the individual employee's control have led to inefficient discharge of a function, or where the retention of an employee is preventing the introduction of changes in structure or practices that would improve efficiency.

14.2 Early termination on the grounds of efficiency will not be granted as a substitute for disciplinary action, or for action on the grounds of capability where such action would be justified.

14.3 The Council believes that termination in the interests of efficiency will be rare. Generally the Council will not exercise its discretion to pay compensation where employment is terminated early on efficiency grounds. However, individual cases will be considered on their merits.

14.4 If compensation is being considered or if there are other capital pension costs arising from the termination, Chief Officers must be able to demonstrate how they intend to make the required efficiency savings and fund the early termination.

15 Process for applying for Early Termination (Redundancy or Efficiency)

- 15.1 Redundancy (or potential redundancy) situations will be identified initially by Chief Officers and linked to the Council's corporate and business planning arrangements, or other emerging changes in business needs. In doing so, Chief Officers will consult with Human Resources and Financial Services. Potential situations for terminating employment in the interest of efficiency will also be identified in this way.
- 15.2 Subject to Human Resources' confirmation of the situation, and Financial Services' confirmation of the financial implications, Chief Officers will then notify staff affected (or staff potentially affected) as part of a structured consultation process, and where appropriate, seek applications for voluntary termination on the relevant grounds. Wherever possible, volunteers will be sought, rather than resorting to compulsory redundancy.
- 15.3 An employee who is considering the possibility of applying for early termination on either redundancy or efficiency grounds should first speak to the appropriate senior Service Officer, who will speak with the Chief Officer on a confidential basis. The Chief Officer will consult Human Resources and Financial Services as appropriate and a decision will be made as to whether or not the application would be supported in principle.
- 15.4 Employees who are members of a recognised trade union are strongly advised to discuss an application for voluntary redundancy with their trade union representative at an early stage in the procedure.
- 15.5 Employees may also wish to contact Human Resources for information about redundancy/compensatory pay and pension benefits (if appropriate).
- 15.6 Human Resources staff are not able to advise on pension matters and further information regarding pension benefits may be obtained from "Your Pension Service" (at Lancashire County Council), as the administering body. Seeking such information will not commit the employee, and the request or application may be withdrawn by the employee at any stage.
- 15.7 In the event that an employee decides to formalise an application for early termination, whether on grounds of redundancy or efficiency, the request should in the first instance be made in writing to the Chief Officer stating the date on which it is requested that the employment should terminate. A copy of the letter should also be sent to the HR and OD Manager.
- 15.8 All such formal applications, whether they include early payment of pension benefits or not, will be referred to the Chief Executive for consideration.

16 Decision Making

- 16.1 Applications which relate to minor changes to the Council's establishment will be determined under the scheme of delegation by the Chief Executive. Minor changes are considered to be those which affect less than 20 employees. However, the Chief Executive may refer any case, to the Personnel Committee and/or Cabinet for consideration, irrespective of the number of employees affected by the change. Factors affecting this decision may be the type of posts that are disestablished or the potential impact on the way services are delivered following any changes.
- 16.2 All changes that impact on more than 20 employees will be referred to members for consideration.

17 Re-employment with Lancaster City Council

- 17.1 An employee who is dismissed on redundancy grounds, and received a voluntary (enhanced) redundancy payment, may be considered for re-employment to posts within the Council after a period of one calendar year has elapsed since the date of termination of employment.
- 17.2 If an employee is dismissed on compulsory redundancy grounds he/she may be considered for re-employment to any post within the Council after the minimum statutory period of four weeks has elapsed.

18 State Benefits

- 18.1 The Council recommends that any employee whose employment with the Council is terminated should request information from the local office of the Department for Work and Pensions about state benefits. Entitlement to any Benefits / Support may be affected by a number of factors. Individuals are advised to check their own personal position in relation to the claiming of benefit.

19 Other Policies

- 19.1 This Policy should be read in conjunction with the Council's Redeployment Policy and Flexible Retirement Policy, which are available from Human Resources or accessible via the intranet (insert URL).

20 Discretionary benefits

- 20.1 Under the regulations that govern the Local Government Pension Scheme (LGPS) the Council is able to exercise a number of discretions. Full details of how the Council has determined it will exercise any discretions is detailed in the "Statement of Lancaster City Council – Employer Discretions" <<Insert URL>>. For further advice and guidance on this matter is available from the HR & OD Team.

21 Review of Policy

- 21.1 This Policy will be regularly kept under review in the light of operating experience, changes in legislation, and the financial position of the Council. If changes are made to the Policy in so far as it relates to discretionary compensation for the early termination of employment, a statement of the amended policy will be published, which will take effect one month after the date of publication.
- 20.2 Changes which are required to apply any applicable legislation or regulation will be incorporated into the policy documents at the appropriate time and reported for information to the recognised trade unions and Personnel Committee.