



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**GOVERNANCE ETHICS AND STANDARDS COMMITTEE**

**19 January 2023**

**Report of the Director of Legal & Democratic Services and Monitoring Officer**

**Revisions to Council Constitution: Delegations relating to Special Severance Payments**

**1. Purpose**

- 1.1 To agree delegations in the Constitution to approve special severance payments and refer these amendments to full Council for approval.

**2. Information and Analysis**

- 2.1 The Council's Constitution makes it clear that full Council is responsible for considering settlements and exit packages on termination of employment or remuneration on appointment in excess of £100,000. This is in accordance with the Openness and accountability in local pay: Guidance under section 40 of the Localism Act. The Director of Legal and Democratic Services also has delegated authority to prosecute, withdraw, defend, compromise, settle, appeal and appear in proceedings, or compromise or settle proceedings or potential proceedings on behalf of the County Council in any court of law, whether criminal or civil, tribunal, inquiry, chamber or other hearing or before any Judge, Registrar, Recorder, Magistrate, Coroner, Inspector, Arbitrator, Mediator, or expert.
- 2.2 The Department for Levelling Up, Housing and Communities published Statutory guidance on the making and disclosure of Special Severance

Payments by local authorities in England on 12 May 2022. A copy of the guidance is accessible via the following link:

<https://www.gov.uk/government/publications/special-severance-payments/statutory-guidance-on-the-making-and-disclosure-of-special-severance-payments-by-local-authorities-in-england>

- 2.3 The guidance explains that Special Severance Payments are payments made to employees, office holders, workers, contractors, and others outside of statutory, contractual or other requirements when leaving employment in public service. Such payments may be considered in situations where the individual concerned resigns, is dismissed, or agrees a termination of contract. The following do not constitute Special Severance Payments:
- statutory redundancy payments
  - contractual redundancy payments, whether applicable to voluntary or compulsory redundancy, and whether agreed by collective agreement or otherwise
  - severance payments made in accordance with that local authority's policy adopted pursuant to Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
  - a strain cost paid to the relevant LGPS administering authority under LGPS Regulation 68(2) which results from a LGPS member's retirement benefits becoming immediately payable without reduction under Regulation 30(7), or under Regulation 30(6) where the employer has waived the reduction under Regulation 30(8)
  - payment for untaken annual leave
  - payments ordered by a court or tribunal or agreed as part of a judicial or non-judicial mediation
  - payments made as part of the ACAS Early Conciliation process
  - payments made to compensate for injury or death of the worker
  - payments made in consequence of the award of ill-health retirement benefits under Regulation 35 of the LGPS Regulations
- 2.4 The guidance recognises that there may be exceptional circumstances where the existing statutory or contractual entitlements, or both, are insufficient to facilitate an exit or to offer sufficient compensation for loss of employment or office. In such circumstances Special Severance Payments may be made where there are exceptional circumstances and they provide value for money.

2.5 The government expects that any Special Severance payments should be approved according to the following process:

- payments of £100,000 and above must be approved by a vote of full council, as set out in the Localism Act 2011.
- payments of £20,000 and above, but below £100,000, must be personally approved and signed off by the Head of Paid Service, with a clear record of the Leader's approval and that of any others who have signed off the payment.
- payments below £20,000 must be approved according to the Council's scheme of delegation.

It is also expected that the Council's s151 Officer and Monitoring Officer should take a close interest in and be able to justify any special severance payments that are made.

2.6 As set out above, the Constitution already includes provisions for payments in excess of £100,000 to be approved by full Council and other settlement payments to be approved by the Director of Legal and Democratic Services. However there is no specific constitutional requirement for payments between £20,000 and £100,000 to be approved by the Head of Paid Service or Leader.

2.7 The requirement to involve council Leaders in such decisions is incongruous when considering that staffing matters are non-executive functions and Leaders hold an executive role. It is understood that the Association of Local Authority Chief Executives is aware of cases where decisions taken solely by a Leader (and not involving other councillors) have been found not to comply with legislation. The Council has an established Appointments and Conditions of Service Committee that is responsible for staffing matters and the Leader is the Chair of that Committee. In order to comply with the spirit of the statutory guidance and avoid challenge to any future decisions it is therefore recommended that the involvement of the Leader in such decisions is in their role of Chair of the Appointments and Conditions of Service Committee and not in their executive role.

2.8 It is therefore proposed that section A4 Staffing Conditions of Appendix 1 – Responsibility for Functions to the Constitution be amended to include a delegation to the Managing Director (as Head of Paid Service) with the approval of the Leader (as Chair of the Appointments and Conditions of Service Committee) to approve any Special Severance Payment on termination of employment between £20,000 and £100,000 in consultation with the s151 officer and Monitoring Officer.

2.9 There may be occasions where the Head of Paid Service or Leader are unable to act owing to conflict, absence or illness. Where the Head of Paid Service is unable to act it is proposed that the Monitoring Officer with the agreement of the s151 officer be authorised to approve any Special Severance Payment on termination of employment between £20,000 and £100,000. Where the Leader is unable to act it is proposed that the Vice-Chair of the Appointments and Conditions of Service be authorised to approve any Special Severance Payment on termination of employment between £20,000 and £100,000.

### **3. Alternative Options Considered**

3.1 Do nothing – this option is not appropriate as it will not ensure that the Constitution reflects the statutory guidance, is kept up to date and is fit for purpose.

### **4. Implications**

4.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

### **5. Consultation**

5.1 Not applicable.

### **6. Background Papers**

6.1 None identified.

### **7. Appendices**

7.1 Appendix 1 – Implications.

### **8. Recommendations**

That the Committee:

- 8.1 agrees to amend section A4 Staffing Conditions of Appendix 1 – Responsibility for Functions to the Constitution to include:
- a) a delegation to the Managing Director (as Head of Paid Service) with the approval of the Leader (as Chair of the Appointments and Conditions of Service Committee) to approve any Special Severance Payment on termination of employment between £20,000 and £100,000 in consultation with the s151 officer and Monitoring Officer;

- b) authority for the Monitoring Officer with the agreement of the s151 officer to approve any Special Severance Payment on termination of employment between £20,000 and £100,000 where the Head of Paid Service is unable to act,
- c) authority for the Vice-Chair of the Appointments and Conditions of Service to approve any Special Severance Payment on termination of employment between £20,000 and £100,000 where the Leader is unable to act; and

8.2 refers these amendments to full Council for approval.

## **9. Reasons for Recommendations**

9.1 To comply with legislative requirements and ensure the Council's Constitution is kept up to date and fit for purpose.

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## **Implications**

### **Financial**

1.1 None.

### **Legal**

- 2.1 Special severance payments are lawful and can be authorised under existing statutory powers.
- 2.2 The Openness and accountability in local pay: Guidance under section 40 of the Localism Act provides that full council should be offered the opportunity to vote before large severance packages beyond a particular threshold are approved for staff leaving the organisation. The Secretary of State considers that £100,000 is the right level for that threshold to be set. The Statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England forms part of the best value regime for local authorities and sets out the government's position on the use of special severance payments.
- 2.3 The Council "must have regard" to the statutory guidance but does not have to follow it slavishly and can depart from it where there is good reason for doing so.
- 2.4 Article 22 of the Constitution makes it clear that changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Governance Ethics & Standards Committee. This report discharges that constitutional requirement.
- 2.5 The Council is required to prepare and keep up to date its Constitution as set out in Section 9P of the Local Government Act 2000 as amended. Approval by full Council of the recommendations in this report will enable the compliance with this duty.

### **Human Resources**

3.1 None.

### **Information Technology**

4.1 None.

## **Equalities Impact**

5.1 None.

## **Corporate objectives and priorities for change**

6.1 This report links to the Council Priority of 'High Performing Value for Money and Resident Focused Services'. The changes proposed will enable efficient, effective and lawful decision making.

## **Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

7.1 None.