



## **EMPLOYMENT COMMITTEE – 17 NOVEMBER 2022**

### **SETTLEMENT AGREEMENTS**

#### **REPORT OF THE DIRECTOR OF CORPORATE RESOURCES**

##### **Purpose of Report**

1. The purpose of this report is to provide the Employment Committee with an overview of the approval process for Settlement Agreements required by the introduction of statutory guidance in May 2022 on the making and disclosure of Special Severance Payments by local authorities.

##### **Policy Framework and Previous Decisions**

2. On 12 May 2022, the Department for Levelling Up, Housing and Communities (DLUHC) published statutory guidance on the making and disclosure of Special Severance Payments by local authorities. This has been issued as part of the best value regime for local authorities in England.

##### **Background**

3. In November 2020, the government introduced a statutory exit cap on payments, limiting these to a maximum of £95,000 on exit payments for public sector authorities.
4. In February 2021, the government announced that the regulations relating to the cap would be revoked with effect from March 2021 as there was a disproportionate impact on workers who were over 55 and who had provided long service. This was an unintended outcome of the regulations.

##### **Recent guidance**

5. The Guidance issued by DLUHC in May 2022 states:

‘1.5 This guidance is issued under section 26 of the 1999 Act, the purpose of which is to:

- Set out the Government’s view that Special Severance Payments do not usually represent value for money and should only be considered in exceptional circumstances,
- Set out the criteria employers should consider in the exceptional circumstances in which it may be appropriate to make a Special Severance Payment,

- Give examples of the exceptional circumstances in which Special Severance Payments may be appropriate,
  - Clarify the disclosure and reporting requirements for Special Severance Payments.’
6. A Special Severance Payment is any payment made to employees as an additional, discretionary sum paid on top of statutory and contractual redundancy or severance terms. It includes any payments reached under a settlement agreement and certain Pay in Lieu of Notice Payments.
  7. Redundancy payments, pension strain cost (where a member’s retirement benefits become immediately payable without reduction), payments made as part of an ACAS early conciliation procedure and payments ordered by a court or tribunal or agreed as part of a judicial or non-judicial mediation are not to be treated as Special Severance Payments and are excluded from the definition.
  8. The guidance requires the Council to consider:
    - a) The economic rationale behind a proposed Special Severance Payment (value for money);
    - b) How the public will perceive it;
    - c) What alternative uses could be made of the expenditure;
    - d) Precedent;
    - e) Evidence of additionality, i.e., that those offered Special Severance Payments would not have been willing, under any circumstances, to leave with their statutory and contractual benefits alone.
  9. The guidance notes that even in cases where a commercial settlement is possible, which would save the authority money compared to the cost of defending litigation, it might still be the case that continuing to defend the case at the extra cost would be appropriate in order to discourage vexatious claims.

### **Approval process**

10. The guidance requires that an approval process is put into place, as follows:
  - a) Special Severance Payments of £100,000 and above must be approved by a vote of Full Council;
  - b) Special Severance 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,
  - c) Special Severance Payments below £20,000 must be approved according to the local authority’s scheme of delegation. It is expected that local authorities should publish their policy and process for approving these payments.
11. The S151 Officer and where appropriate, the Monitoring Officer, are expected to take a close interest in, and be able to justify, any Special Severance Payments that are made by the authority and in particular any payments made that are not consistent with the content of the guidance.

**Legal issues**

12. The guidance amplifies the existing common law duty that payments should only be made where there is a convincing case that they are in the interests of taxpayers.
13. The Council is required to pay regard to and to follow statutory guidance unless it can justify departure from it for a good reason.

**Current Progress and proposed next steps**

14. In order to implement the guidance issued by DLUHC, which came into immediate effect on its introduction in May 2022, an approval process needs to be developed to enable the Council to show that it has considered the relevant criteria, that payments are approved at the correct level and to ensure that appropriate records are created and kept showing compliance with the guidance and best value duties. Officers are currently developing this process.
15. There will be a need to amend the Council's Constitution, to reflect the decision-making process required within the guidance, and this will be considered as part of the annual review of the Constitution which will be presented to Full Council for approval in due course.

**Recommendations**

16. The Employment Committee is asked to note the overview provided on the development of an approval process for Settlement Agreements as required by the statutory guidance issued in May 2022 on the making and disclosure of Special Severance Payments by local authorities.

**Circulation under Local Issues Alert**

17. None.

**Equality and Human Rights Implications**

18. There are no equality and human rights implications arising from this report. However, these will be considered as the new policy is developed and an Equality and Human Rights Impact Assessment carried out as part of that process.

**Background Papers**

Statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England:

<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>

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