

REPORT TO:	Management Review Committee	
DATE:	20 March 2018	
PORTFOLIO:	Cllr Gareth Molineux - Resources	
REPORT AUTHOR:	Kirsten Burnett	
TITLE OF REPORT:	Proposed Amendment to the Pensions Discretion Policy Statement	
EXEMPT REPORT (Local Government Act 1972, Schedule 12A)	No	Not applicable
KEY DECISION:	No	If yes, date of publication:

1. Purpose of Report

1.1 To present a proposed amendment to the Pensions Discretion Policy Statement.

2. Recommendations

2.1 That the proposed amendment is accepted and added to the published Policy Statement.

3. Reasons for Recommendations and Background

3.1 In a recent case heard by the Employment Appeals Tribunal (EAT), **University of Sunderland v Drossou**, (UKEAT/0341/16), the EAT held that when assessing the amount of a week's pay under section 221(2) of the Employment Rights Act 1996 for unfair dismissal compensation, a week's pay is the amount of remuneration payable under the contract of employment and can therefore include not only wages/salary but also the employer contribution made in respect of the employee's membership of a pension scheme.

3.2 Statutory redundancy pay is calculated in accordance with the week's pay provisions of the ERA, subject to a cap which is currently £489. Accordingly, following the *Drossou* approach would mean that employer pension contributions would have to be factored into statutory redundancy pay. However, in terms of any enhanced redundancy pay, the LGA advises that local authorities have the means to mitigate the effects of this decision by making it clear, if not already so, that such payments do not include any sum in respect of employer pension contributions.

3.3 In respect of enhanced redundancy payments the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales)

provide authorities with the power to go beyond the statutory maximum week's pay and base redundancy payments on a figure up to actual week's pay. We, like many authorities, use this discretion to base redundancy payments on an actual week's pay.

- 3.4 An authority can limit payments to the statutory maximum, or base them on actual pay or choose any amount in between, i.e. the policy could state an amount lower than the full actual week's pay. Until the *Drossou* case the notion of a week's pay was restricted to wages/salary and most authorities which applied this discretion simply choose actual week's pay.
- 3.5 Following the *Drossou* judgment, the LGA advises authorities to revisit their discretionary policies in order to assess whether it has any impact. For example, if the policy statement has lifted directly from Regulation 5 and refers to a week's pay calculated in accordance with the ERA but without a limit on the amount, then the effect of the *Drossou* case would be to lift the actual pay by including pension contributions. If authorities do not wish to make such additional payments, the LGA recommends amending the wording and stating more explicitly how any payment would be limited by, for example expressly stating which elements of pay will be included and/or stipulating that payments by way of pension contributions will not be included.
- 3.6 There is only a small change proposed to the Pensions Discretion Policy Statement. This is in the section headed Redundancy and Compensation Payments which would have an additional sentence at the end:

Employer's policy:

The Council will consider awarding a lump sum payment up to a maximum of 104 weeks' pay (inclusive of any statutory redundancy payment to eligible employees whose service is terminated due to:

- redundancy
- efficiency of the Service; or
- other holder of joint appointment leaving

Applications will be determined by the Chief Executive Officer (CEO) or in the absence of the CEO, by the nominated deputy. If a decision is to be made relating to the CEO, this will be determined by the Management Review Committee.

The council has decided to use the discretion to waive the weekly pay ceiling placed on statutory redundancy payments and will calculate redundancy payments based on actual weekly pay. **This will not include any employer's pension contributions.**

4. Alternative Options considered and Reasons for Rejection

- 4.1 None

5. Consultations

5.1 None. This is a Council discretion and the proposed amendment will retain the status quo in terms of employees' entitlements.

6. Implications

Financial implications (including any future financial commitments for the Council)	The proposed change is designed to ensure that we are not legally obliged to pay higher redundancy payments.
Legal and human rights implications	
Assessment of risk	
Equality and diversity implications A <i>Customer First Analysis</i> should be completed in relation to policy decisions and should be attached as an appendix to the report.	None

7. Local Government (Access to Information) Act 1985: List of Background Papers

7.1 None.