
REPORT TO:	Audit & Governance Committee General Purposes Committee
DATE:	13 September 2021 18 November 2021
SERVICE AREA:	Legal & Governance
REPORTING OFFICER:	Head of Legal & Governance (<i>Jennifer Norton</i>)
SUBJECT:	Statutory Guidance on Special Severance Payments
WARD/S AFFECTED:	ALL DISTRICT
FORWARD PLAN REF:	N/A

1.0 PURPOSE OF REPORT

1.1 This report proposes that the New Best Value Statutory Guidance regarding Special Severance Payments (consulted on by government between 2 July and 13 August 2021) be adopted as the Council's response to a recommendation in the Audit Completion Report for the year ended 31 March 2021.

2.0 RECOMMENDATION/S
Audit & Governance Committee

2.1 To note the statutory guidance on the making and disclosure of Special Severance Payments by local authorities at Appendix 1 and to receive a verbal update on any outcome of the government consultation.

2.2 To agree that in accordance with the statutory guidance that a recommendation be made to the General Purposes Committee for inclusion of a delegation in the constitution to the Chief Executive Officer with the approval of the Leader to authorise such payments following receipt of the completed pro forma report at Appendix 2 and in consultation with those officers listed at paragraph 4.18 of this report.

2.3 That the approval of full Council is required before any Special Severance Payment in excess of £100,000 can be approved for staff leaving the organisation.

- 2.4 That all Special Severance Payments be reported annually to the Audit & Governance committee on an anonymised basis as per paragraph 4.20 of this report.

General Purposes Committee

- 2.5 That the Constitution be amended to give effect to recommendation 2.2

3.0 RECOMMENDED REASON/S FOR DECISION/S

- 3.1 To ensure that in the exceptional circumstances where it is decided that a Special Severance Payment should be paid, that the Special Severance Payments arrangements continue to be fair, proportionate, lawful and provide value for money for the taxpayer and accord with the latest government guidance.

4.0 THE REPORT

- 4.1 The Audit Completion Report for the year ended 31 March 2021 recommended that the Council should consider updating risk management arrangements for settlement agreements. The Report noted that the Council has appropriately disclosed exit packages in its revised statement of accounts. The arrangements under the Constitution currently provide for delegated approval by the Monitoring Officer for settlement agreements. The Report encouraged members to consider updating their risk management arrangements for employee settlement agreements to ensure that, for each case, members also approve payments after satisfying themselves that there is a clear rationale and payments comply with legislation; costs are minimised; and available options have been considered.
- 4.2 The Report recognised the management response being that the existing process already recognised that there must be a clear rationale for payments which complies with legislation; that costs should be minimised and available options considered; and amounts properly authorised and appropriately disclosed in the accounts. The Report also recognised that the number of such cases had been small, that flexibility is sometimes needed to deal with them in a timely manner, and the Council agreed that it would review its processes in order to ensure member involvement in future decisions.
- 4.3 Government has now produced guidance setting out its position on the use of Special Severance Payments made by local authorities. It is proposed that the statutory guidance be reviewed and implemented including any amendments as a result of the consultation exercise over the summer.

What are Special Severance Payments?

- 4.4 The guidance explains that Special Severance Payments are payments made to employees, officeholders, workers, contractors, and others outside of statutory, contractual or other requirements when leaving employment in public service. It also explains that employers may sometimes consider making such a payment in situations where the individual concerned resigns, is dismissed, or agrees a termination of contract.
- 4.5 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
- Redundancy payments made in line with the requirements of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006;
- 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 to compensate for ill-health, injury or death of the worker.

4.6 The following types of payments are likely to constitute Special Severance Payments:

- Any payments reached under a settlement agreement between the employer and employee to discontinue legal proceedings without admission of fault;
- The value of any employee benefits or allowances which are allowed to continue beyond the employee's agreed exit date;
- Write-offs of any outstanding loans;
- Any paid special leave, such as gardening leave;
- Any honorarium payments or gifts;
- Any hardship payments;
- Any payments to employees for retraining related to their termination of employment.

4.7 The following types of payments may constitute Special Severance Payments, depending on the terms of the individual's contract, relevant statutory provisions, any non-statutory applicable schemes and other relevant terms and conditions:

- Pay or compensation in lieu of notice (depending on the contractual basis for its payment);
- Pension strain payments arising from employer discretions to enhance standard pension benefits.

When should Special Severance Payments be paid?

4.8 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.

4.9 The guidance also states that councils may also consider a Special Severance Payment in order to settle disputes, where it can be properly demonstrated that other routes have been thoroughly explored and excluded. After receiving appropriate professional advice, it may then possibly be concluded that a special severance payment is the most suitable option and prudent use of public money.

What should the process be for authorising Special Severance Payments?

4.10 Local authorities must comply with the duty of Best Value. In considering whether it is appropriate to make a Special Severance Payment, local authorities therefore need to consider whether such a payment would be a

proper use of public money. The draft guidance explains that councils should be able to demonstrate their economic rationale behind proposed Special Severance Payments including consideration of:

- whether there is any feasible possibility of exiting the individual at a lower cost. Only where there is no such possibility should a Special Severance Payment be considered;
- how the exit payment will be perceived by the public and whether it is in line with the duty to manage taxpayers money appropriately;
- what alternative use could be made of that expenditure. All Special Severance Payments necessarily reduce the funds that would otherwise be available to deliver important public services;
- the setting of any potential precedent (e.g. where a Special Severance Payment is made to certain employees and not others);
- evidence for additionality, i.e. that those offered Special Severance Payments would not have, under any circumstances, been willing to leave with their statutory and contractual benefits alone.

4.11 The guidance also states that councils should seek legal advice on the prospects of successfully defending an employment tribunal claim, if an employee were to take a legal route to appeal any grounds of their employment being terminated. The chance of success and the costs likely to be incurred should be noted and weighed up against the costs of making a Special Severance Payments. The Council should also

- ensure that these payments are not used to avoid management action, disciplinary processes, unwelcome publicity or avoidance of embarrassment;
- consider aligning with private sector practice, where payments are typically less generous. This is important given the added duty in the public sector to prudently manage taxpayers' money; and
- manage conflicts of interest to ensure that individuals who are the subject of complaints play absolutely no role in deciding whether cases should be settled from public funds.

4.12 The guidance explains that those approving a Special Severance Payment related to a settlement agreement should be provided with appropriate evidence that attempts were made to resolve disputes before they escalated to a legal claim. They should also bear in mind that even if the cost of defeating an apparently frivolous or vexatious claims will exceed the likely cost of that settlement to the employer, it may still be desirable to take the case to formal proceedings. This is because winning such cases will discourage future frivolous or vexatious claims and demonstrate that the council does not reward such claims.

Who should approve any Special Severance Payment & what should the process at Harrogate Council be?

4.15 The Government states in the draft guidance that it expects that any Special Severance payments should be personally approved and signed off by the Chief Executive Officer), with a clear record of the Leader's approval and that of any others who have signed off the payment. The guidance also says that as part of their duties, an authority's s151 Officer, and where appropriate, the Monitoring Officer, should take a close interest in and be able to justify any special severance payments that are made by that authority and in particular any payments made that are not consistent with

the content of this guidance. Clearly, however, if any of the senior officers mentioned here are to be the recipient of the payment, they should not play any part in the decision-making process.

- 4.16 In order to adopt the approach referenced in the guidance and provide the appropriate written evidence, legal and HR advice to support any decision on a Special Severance Payment it is proposed that a pro forma report be completed with HR and legal input. The proposed pro forma is at Appendix 2 and adopts the format of the pro forma for HM Treasury Approval for Special Severance Payments.
- 4.17 The only exception to the completion of a pro forma report in advance of an agreement being reached that is proposed is that for an urgent case such as agreeing a settlement payment during an employment tribunal case or settling on the court steps where the ability to agree the best possible resolution for the Council can be time dependent. In these cases it is proposed that the Head of Legal & Governance continues to have the delegated authority to settle proceedings in the best interests of the Council and that the pro forma report be prepared as soon as reasonably practicable after the event and be provided to the Chief Executive Officer and Leader with an explanation as to why urgent agreement was required.
- 4.18 In so far as a limit on these officer's authority then the Localism Act 2011 requires the Council to prepare a pay policy statement for each financial year. Section 40 of the Act includes provision for the Secretary of State to issue guidance on the content and application of senior pay statements. The Council must have regard to this guidance in the exercise of its functions under the pay accountability provisions. The guidance makes clear that full council should be given the opportunity to vote before large salary packages offered in respect of a new appointment and that the Secretary of State considers that £100,000 is the right level for that threshold to be set. The guidance also provides that full council should have the opportunity to vote before large severance packages beyond a particular threshold are approved for staff leaving the organisation. As with salaries on appointment, the Secretary of State considers that £100,000 is the right level for that threshold to be set.
- 4.19 It is therefore proposed that the constitution be amended to include delegation to the Chief Executive Officer with the approval of the Leader and in consultation with the s151 officer, Monitoring Officer and a senior HR officer to approve any Special Severance Payment below £100,000 upon receipt of the completed report.

Annual Reporting

- 4.19 In accordance with schedule 1 of the Accounts & Audit Regulations 2015 the Council discloses in its annual accounts the remuneration of senior employees including details of any severance payments.
- 4.20 It is proposed that at the same time that the annual accounts are presented that the Audit & Governance Committee be provided with the information as to any Special Severance Payment made during the financial year regardless of the seniority of employee. All reporting should be anonymised and comply with data protection law.

5.0 REQUIRED ASSESSMENTS AND IMPLICATIONS

- 5.1 The following were considered: Financial Implications; Human Resources Implications; Legal Implications; ICT Implications; Strategic Property/Asset Management Considerations; Risk Assessment; Equality and Diversity (the Public Sector Equality Duty and impact upon people with protected characteristics). If applicable, the outcomes of any consultations, assessments, considerations and implications considered necessary during preparation of this report are detailed below.
- 5.2 HR support the report and agree that appropriate evidence, legal and HR advice should be provided to support any decision on a Special Severance Payment and that the proposed pro forma report is completed with both HR and legal advice/input

OFFICER CONTACT: Please contact (Jennifer Norton, Head of Legal & Governance), if you require any further information on the contents of this report. The officer can be contacted at (*Legal & Governance, PO Bo 787, Harrogate, HG1 9RW*) 01423-500 600 or by e-mail – Jennifer.norton@harrogate.gov.uk