

Meeting date: 14 November 2022

Report to: Remuneration Committee

Report title: Special Severance Payments

Report from: Director of Resources and Deputy Chief Executive

Report author/lead contact officer: Adrian Cattell (Head of Human Resources)
acattell@solihull.gov.uk

Wards affected:

- All Wards | Bickenhill | Blythe | Castle Bromwich | Chelmsley Wood |
 Dorridge/Hockley Heath | Elmdon | Kingshurst/Fordbridge | Knowle |
 Lyndon | Meriden | Olton | Shirley East | Shirley South |
 Shirley West | Silhill | Smith's Wood | St Alphege
-

Public/private report: Public

Exempt by virtue of paragraph:

1. Executive Summary

- 1.1 The purpose of the report is to inform Remuneration Committee of the new Statutory Guidance that sets out the obligations placed on Local Authorities when making Special Severance Payments (SSPs).
- 1.2 The SSP Guidance, issued under section 26 of the Local Government Act 1999, came into effect in May 2022.
- 1.3 The purpose of the Guidance is to
- 1.3.1. set out that SSP's do not usually represent value for money and should only be considered in exceptional circumstances
 - 1.3.2. outline the criteria to be considered in the exceptional circumstances in which it may be appropriate to make a SSP
 - 1.3.3. clarify the disclosure and reporting requirements for SSP

1.4 In the exceptional circumstances where it is decided that a SSP should be paid, it is the responsibility of the Council to ensure the SSP is fair, proportionate, lawful and provides value for money for the taxpayer.

2. Decision(s) Recommended

2.1 The Remuneration Committee is asked to note the contents of the report, including the revised approval arrangements as detailed in paragraph 3.5, in advance of receiving an updated Pay Policy Statement for consideration at its meeting on 19 January 2023.

Report Title: Special Severance Payments

3. Matters for Consideration

- 3.1 In May 2022 the Department for Levelling Up, Housing & Communities (DLUHC) issued Statutory Guidance regarding the making of Special Severance Payments (SSPs).
- 3.2 The guidance, issued under section 26 of the Local Government Act 1999, came into effect on 12 May 2022, and sets out the following:

3.3 What is a Special Severance Payment (SSP)?

SSPs are described as payments made outside of statutory, contractual or other requirements when leaving employment in public service.

The key to whether such exit related payments are SSPs will be whether they **exceed** statutory, contractual, or other requirements.

The following types of payments are likely to constitute SSPs:

- a) any payments reached under a settlement agreement to discontinue legal proceedings without admission of fault
- b) the value of any employee benefits or allowances which are allowed to continue beyond the employee's agreed exit date
- c) loan write-offs
- d) honorarium payments
- e) hardship payments
- f) any payments to employees for retraining related to their termination of employment
- g) pension strain payments where the employer is exercising its discretion to enhance pension benefits, rather than acting in accordance with another existing commitment to enhance pension
- h) pay or compensation in lieu of notice where there is no contractual obligation to pay in lieu and where the payment is greater than the salary due in the notice period

In reviewing the guidance in the context of the Council the only payments that are most likely to be considered, and only in exceptional cases are those in a) above.

The following are not SSPs:

- a) statutory and contractual redundancy payments
- b) severance payments made under the authority's policy under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
- c) pension strain payments for those who leave by reason of redundancy or business efficiency aged 55 or over (see Regulation 30(7) LGPS Regulations), or where the employer waives the reduction on a flexible retirement (see 30(6) and (8) LGPS Regulation).

- d) payment for accrued but untaken annual leave
- e) payments ordered by a court or tribunal or agreed as part of a judicial or non-judicial mediation
- f) payments made as part of the ACAS Early Conciliation process
- g) payments made to compensate for injury or death of the worker
- h) payments made in consequence of the award of ill-health retirement benefits under Regulation 35 of the LGPS Regulations

It is noted that depending on the terms of the contract, relevant statutory provisions, any non-statutory applicable schemes and other relevant terms and conditions, there may be other types of payments that may constitute a SSP.

3.4 **Exceptional Circumstances & Value for Money**

Severance terms in the public sector are viewed to be significantly better than the minimum statutory redundancy entitlement and are often higher than those made in the private sector. The guidance explains that paying additional, discretionary sums on top of these entitlements (SSP) do not usually provide good value for money and so, should only be considered in exceptional cases.

This could include, for example, a case to settle a dispute where it can be demonstrated that all other alternatives have been fully explored and exhausted and appropriate legal advice has been obtained.

Whilst there may be exceptional circumstances, the guidance does require that such consideration must be given as to whether a SSP would be a proper use of public money. This should be determined through scrutiny of the economic rationale, as well as the impact on efficiency, such as the prospects of successfully defending a claim and likely costs; and effectiveness, ensuring for example that payments are not used to avoid management action.

The Council has the responsibility to ensure that SSPs are only made when there is a clear, evidenced based justification and where it can be demonstrated that all relevant internal policies and procedures have been fully explored and excluded and all alternative actions have been fully considered and documented.

3.5 **Approvals**

A business case and all supporting evidence including, where appropriate, the attempts taken to resolve a dispute should be provided to those approving a SSP.

The guidance sets out the approval process for SSPs as follows:

- payments of £100,000 and above must be approved by full council,
- 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 local authority's scheme of delegation. As outlined in the Pay Policy Statement, this is the Deputy Chief Executive and Director of Resources.

Where the proposed SSP is to the Head of Paid Service, to avoid a conflict of interest the payment should be approved by a panel including at least two independent persons. The guidance does not prescribe a definition of an independent person. It is the discretion of each authority to find appropriate independent persons who have not been previously involved in the situation.

3.6 Clarifies the disclosure and reporting requirements for SSPs

Under the guidance the existing requirements placed on local authorities to publish information on pay and exit payments are set out in detail.

As well as following existing guidance on reporting exit payments, the SSP guidance provides that local authorities should also disclose in their annual accounts all severance payments, pension fund strain costs and other SSPs made in consequence of termination of employment or loss of office (but excluding payments on death or ill-health retirement).

Work is currently being undertaken to ensure that the Council meets the revised reporting requirements.

4. What options have been considered and what is the evidence telling us about them?

- 4.1 A statement by Government in response to the draft statutory guidance set out that further discussions were being undertaken as to whether the guidance will apply to local government staff employed in a maintained school. Whilst that position is confirmed, we are advised that at the present time this guidance does not apply.
- 4.2 In exceptional cases where SSP type payments are made by the Council, such considerations and governance set out in the guidance are already established practice where alternative options are explored and exhausted and the necessary legal advice taken before making the payment. Therefore, this part of the guidance is unlikely to lead to any significant change in practice.
- 4.3 The guidance states that those approving a SSP should be provided with evidence of the attempts to resolve a dispute before they escalated to a legal claim. In relation to frivolous or vexatious claims, even where the costs of defending that claim will exceed the likely costs of settling it, the guidance provides that it may be more desirable to defend the claim as that will discourage future similar claims. This practice reflects the Councils existing approach where SSP type payments are considered.
- 4.4 A revised Pay Policy Statement which will incorporate the SSP guidance will be presented to the Remuneration Committee on 19 January 2023 and then Full Council on 7 February 2023 for approval.
- 4.5 A review of current procedures that the SSP has implications for, such as approvals process, is in progress.

5. Reasons for recommending preferred option

- 5.1 NA

6. Implications and Considerations

6.1 State how the proposals in this report contribute to the priorities in the [Council Plan](#):

Priority:	Contribution:
People and Communities: 1. Improving outcomes for children and young people in Solihull. 2. Good quality, responsive, and dignified care and support for Adults in Solihull when they need it. 3. Take action to improve life chances and health outcomes in our most disadvantaged communities. 4. Enable communities to thrive.	NA
Economy: 5. Develop and promote the borough's economy, with a focus on revitalising our town and local centres. 6. Maximising the opportunities of UK Central and HS2. 7. Increase the supply of affordable and social housing that is environmentally sustainable.	NA
Environment: 8. Enhance our natural environment, improve air quality and reduce net carbon emissions.	NA
9. Promote employee wellbeing	NA

6.2 Consultation and Scrutiny:

6.2.1. NA

6.3 Financial implications:

6.3.1. In the exceptional circumstances where it is decided that a SSP should be paid, it is the responsibility of the Council to ensure the SSP arrangements are fair, proportionate, lawful and provide value for money for the taxpayer; as is the Councils current practice.

6.3.2. In line with the Councils approvals process, monitoring and reporting obligations of any exit payments, including SSPs, paid by the Council are in line with requirements set out in the guidance.

6.4 Legal implications:

6.4.1. A legally compliant Pay Policy Statement will be presented to the Remuneration Committee on 19 January 2023.

6.5 Risk implications, including Risk Appetite:

6.5.1. No significant risks have been identified in respect of the SSP guidance that has been implemented.

6.6 Equality implications:

6.6.1. No equality implications have been identified in respect of the SSP guidance that has been implemented

6.7 Linkages to our work with the West Midlands Combined Authority (WMCA), Local Enterprise Partnership or the Birmingham & Solihull Integrated Care System (ICS):

6.7.1. NA

7. List of appendices referred to

7.1 NA

8. Background papers used to compile this report

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

9. List of Other Relevant Documents

9.1 NA