

## **LEGAL UPDATE**

Report of the: Head of HR & Organisational Development  
Contact: Shona Mason  
Annexes/Appendices (attached):  
Other available papers (not attached):

### **REPORT SUMMARY**

**This report provides an overview of the following employment legislation and the impacts on the Council:**

- **Shared Parental Leave**
- **Living Wage**
- **Exit/Termination Payments**
- **Gender Pay Gap Reporting**

### **RECOMMENDATION (S)**

**That the Panel receives the information and identifies any area of concern.**

*Notes*

## **1 Implications for the Council's Key Priorities, Service Plans and Sustainable Community Strategy**

- 1.1 In order for the Council to achieve its Key Priorities and to meet the needs of the Community Strategy the Council's workforce plays an important role in the delivery of services to Epsom & Ewell Borough residents.
- 1.2 It is imperative that the Council adheres to all employment legislation and is abreast of any legal or regulatory changes.

## **2 Shared Parental Leave**

- 2.1 With effect from 5 April 2015, a new statutory employment right to Shared Parental Leave came into force. This allows employees to convert some of their maternity or adoption leave and share it with the other parent. In the light of this new legislation, and to ensure legislative compliance, a
- 2.2 Shared Parental Leave policy has been developed and implemented. To date we have received no applications for shared parental leave. The Government is considering extending shared parental leave to grandparents however further consultation is expected on this.

### **3 National Living Wage**

- 3.1 With effect from 1 April 2016, the Government introduced a new minimum wage rate for those age 25 and over which will be called the “National Living Wage” (NLW), at £7.20 per hour and will increase to £9 per hour by 2020 (approx. 45p per year). This affected a number of casual workers and cost the Council an additional total of £666.

### **4 Recovery of Exit Payments**

- 4.1 In June 2014, a consultation on the proposal to recover exit payments when high earners return to the same part of the public sector within 12 months of leaving was published by the Conservative and Liberal Democrat Coalition Government. This was followed by a response to the consultation and draft regulations. Subsequently, the current Government issued another consultation on a revised set of regulations. This proposal is expected to be implemented in July 2016.
- 4.2 Recovery of the exit payment will apply where the individual returns to any part of the public sector, not just a sub-sector of it (e.g. local government). The provisions will apply to those that earn £80,000 per annum, rather than £100,000 as was originally planned. The costs associated with pensions on exit under the LGPS regulations will now be included as part of the recovery.

### **5 Cap on Exit Payments**

- 5.1 The current Government issued a consultation on capping exit payments in the public sector on 31 July 2015. The Government issued a response to its consultation on 16 September 2015. This provision is expected to be implemented from October 2016.
- 5.2 The proposed cap of £95,000 is anticipated to apply to the following:
- 5.2.1 Redundancy payment
  - 5.2.2 Costs associated with early access to an unreduced pension
  - 5.2.3 Non-financial and other benefits, for example, where an employer offers other benefits such as additional, paid annual leave at the end of employment
  - 5.2.4 Payments in lieu of notice
  - 5.2.5 Payments relating to the cashing up of outstanding entitlements, such as untaken leave or allowances
- 5.3 The Council can agree to waive or relax the cap.
- 5.4 The exit payment cap is most likely to affect staff with long local government service as well as senior staff. It will also affect those at the expensive end of their pensions entitlements (e.g. 55).

- 5.5 Only two payments in recent times have exceeded this amount. In any case the Localism Act required termination payments exceeding £100k to be approved by Full Council, therefore this is only an increase of £5k.
- 5.6 Removing the ability to retain management discretion would impact our ability to manage efficiencies particularly with the removal of a default retirement age (this made it unlawful for employers to instigate retirement at a predetermined age).
- 5.7 It also impacts our ability to encourage settlements in contentious cases. Therefore some problematic capability cases (such as those that are based on behaviours) may not be resolved.

## **6 Further Reforms to Exit Payments**

- 6.1 The Government issued another consultation on further reforms to exit payments in February 2016. The policy proposals include options for further caps on exit payments, as well as removing or limiting employer-funded 'top up' pension payments, to enable early access to a pension.
- 6.2 The government proposal is to take forward some or all of the following elements:
  - 6.2.1 Setting the maximum tariff for calculating exit payments at three weeks' pay per year of service.
  - 6.2.2 Capping the number of months used to calculate redundancy payments at 15 months. In respect of this, the consultation suggests that where employers have different arrangements for voluntary and compulsory redundancies, there may be a case for maintaining that difference by applying a lower limit (presumably for compulsory redundancies). In the same way where employers offer exit packages that are not classed as redundancy, then there might be a case for applying a slightly higher limit.
  - 6.2.3 Setting a maximum salary for the purpose of calculating an exit payment. For example, this could potentially align with the NHS limit of £80,000.
  - 6.2.4 Tapering the amount of lump sum compensation an individual is entitled to receive as they get closer to pension retirement age.
  - 6.2.5 Reducing or ending employer-funded early access to pension. This could include:
    - a) capping the amount of employer funded pension contribution top ups to no more than the redundancy lump sum the individual would be entitled to (as applies in the NHS now)

- b) removing the ability of employer top ups altogether, while giving the individual the option of deciding whether to use any lump sum exit payment to increase their pension entitlement
  - c) increasing the minimum age at which an employee is able to receive an employer funded top up, so it is more closely aligned with the individual's Normal Pension Age (NPA) (in most cases 67 or 68) under their pension scheme. The minimum age could be set at 5 years before the individual's NPA, or at a minimum age of 55 or 58 across all public sector pension schemes.
- 6.3 It will impact our ability to manage the workforce, reducing the attractiveness of early retirement. Employees are unlikely to agree to termination payments in the event that their pension is adversely impacted therefore our ability to proactively manage exits outside redundancy or formal casework is severely impacted.
- 6.4 Our ability to conduct restructurings or redundancies (and to include those at the expensive age of potential retirement, e.g. 55) is enhanced if we do not have to make expensive pension payments.
- 6.5 Since the abolition of the default retirement age, we are better able to make any necessary redundancies without being financially penalised for long serving members of staff very near (or past) retirement age.

## **7 Gender Pay Gap Reporting**

- 7.1 The Government has issued a consultation on draft regulations to require employers with 250 or more employees to publish gender pay gap information in line with the powers under section 78 of the Equality Act 2010. However the requirement will only apply to private sector and voluntary organisations so is not relevant for local authorities who will already be publishing pay information as part of complying with the Public Sector Equality Duty.
- 7.2 The draft regulations require large employers to publicly publish certain measures which outline differences in pay between male and female employees. The government believes that increasing pay transparency will lead to employers taking more action to address pay inequality.
- 7.3 The regulations will come into force on 1 October 2016 and will apply to all employers with 250 or more relevant employees on 30 April 2017, and each subsequent anniversary of that date thereafter. The information to be published will relate to pay as at 30 April in the relevant year, and the information will then have to be published within 12 months of that date. Therefore, the first date information will have to be published by is 30 April 2018.

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- 7.4 What counts as pay under the regulations is clearly important, as ultimately that may impact on the size of the gender pay gap. Under the draft, pay includes:
  - 7.4.1 basic pay
  - 7.4.2 paid leave
  - 7.4.3 maternity pay
  - 7.4.4 sick pay
  - 7.4.5 area allowances
  - 7.4.6 shift premium pay
  - 7.4.7 bonus pay (including productivity pay and long term incentive plans)
  - 7.4.8 other pay including car allowances, on call and standby allowances, clothing, first aider or fire warden allowances
- 7.5 However, pay does not include:
  - 7.5.1 overtime pay
  - 7.5.2 expenses
  - 7.5.3 the value of salary sacrifice schemes
  - 7.5.4 benefits in kind
  - 7.5.5 redundancy pay
  - 7.5.6 arrears of pay
  - 7.5.7 tax credits
- 7.6 The regulations require the employer to publish their overall average mean and median gender pay gaps, based on gross hourly rates of pay. This approach is in line with the one used by the Office for National Statistics. In addition employers will have to publish the average mean difference between bonus payments made to men and women. Only those employees who receive a bonus will be included in the calculation.
- 7.7 Employers will have to publish the number of men and women in each pay quartile. The quartiles will be calculated by ranking each relevant employee in order of their gross hourly rates of pay, and then dividing those employees into four equal groups from the lowest paid to the highest paid.

## **8 Proposals**

- 8.1 HR will continue to closely monitor changes in employment legislation and update relevant policies and implement monitoring as and when required to ensure compliance with legislative changes.

## **9 Financial and Manpower Implications**

- 9.1 ***Chief Finance Officer's comments:*** None

## **10 Legal Implications (including implications for matters relating to equality)**

- 10.1 All HR practices governed by legislation are done so in line with Council's HR policies which adhere to employment legislation. These are updated to reflect any employment law updates throughout the year.
- 10.2 ***Monitoring Officer's comments:*** The legal issues are addressed in the body of the report

## **11 Sustainability Policy and Community Safety Implications**

- 11.1 None

## **12 Partnerships**

- 12.1 None

## **13 Risk Assessment**

- 13.1 It is imperative that the Council follows fair and consistent HR procedures because the potential costs against the Council should it fail to implement a fair and robust process and procedure could be substantial should an Employment Tribunal claim be successful. As well as the financial costs, the reputational damage to the Council as an elected authority and as an employer could be considerable.
- 13.2 It is worth noting that there is no limit on compensation payable in successful claims of discrimination on the grounds of one of the protected characteristics defined in the Equality Act 2010. There are currently no such claims against the Council.

## **14 Conclusion and Recommendations**

- 14.1 The Panel is asked to receive and note the contents of the report.

**WARD(S) AFFECTED:** N/A