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To: Personnel Committee **Date:** 4 November 2015

Subject: **Employment Policy Update**

Classification: Unrestricted

SUMMARY: An employment policy update focusing on:

1. Statutory Changes
 2. Resolution Policy, and
 3. the revised flexible working policy which Committee is asked to agree.
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1. INTRODUCTION

- 1.1 The Personnel Committee receives, as a minimum, an annual report on updates to Kent County Council's employment policies and procedures.
- 1.2 This paper provides the Personnel Committee with an update on a range of items that are informing employment policies and processes in the Council. The Committee is invited to note for information the intended and proposed statutory changes and an update on Kent County Council's Resolution Policy. It is also asked to consider the proposed revision to the flexible working policy, Work Smart, and agree its contents.

2. STATUTORY CHANGES

- 2.1 Since the last Committee the Government has introduced a legislative change that will affect employees earning over £100,000 and has consulted on three other proposals. This section of the report reviews the government's intentions and assesses any implications as the matters currently stand where the Authority knows what the intended final outcomes are.

Recovery of Exit Payments

- 2.2 The Small Business, Enterprise and Employment Act 2015 facilitates the recovery of exit payments made to employees earning over £100,000 per annum if they are re-employed in the same 'sub-sector' within a year of leaving their previous employer. Draft regulations are currently available which set out more detail than is available in the Act about how the process will operate. The Regulations will be implemented no later than the 1 April 2016.

- 2.3 The regulations cover a wide range of payments including redundancy, the employer costs of early release of pension, payment in lieu of notice and payments in respect of outstanding contractual entitlements (e.g. payment for untaken annual leave). Repayment is made to the organisation from which the employee exited.
- 2.4 The amount of the severance payment to be recouped will be reduced pro-rata depending on where, when and at what level the individual returns to the public sector.
- 2.5 The regulations also include a waiver to support those eventualities where money may be paid, under a settlement agreement. This ensures that employers can still enter into negotiations which protect them from the risk of successful litigation.
- 2.6 The regulations place a duty on all parties involved, including the new employer. The outgoing employer must ensure employees are aware of the scheme and it must seek repayment where appropriate. The employee must inform the new and old employers of any recoverable payment and, before they take up office, make arrangements to repay. The new employer must not let the employee start until payment has been made or remove them from the new role if it is not paid.
- 2.7 This law will require the Authority to:
- introduce processes for seeking repayment
 - make changes to its contracts
 - ensure its policies enable these processes to happen

Cap on Exit Payments

- 2.8 The Government has consulted on limiting exit payments in the public sector at £95,000. The Government has responded to the consultation and a significant number of the 4000 respondents urged them not to introduce a cap. However, the Government has decided to progress with a cap of £95,000 and this will apply whether the employee leaves on a voluntary or compulsory basis. It will include redundancy, the employer costs due to the early release of pension (the respondents asked the government not to include this in the calculation), payment in lieu of notice and payments in respect of outstanding contractual entitlements (e.g. payment for untaken annual leave).
- 2.9 This proposal will capture far more people than may have been intended as many long serving employees who do not earn close to the six figure sums will be covered by the repayment regulations. This is due to the cost of the early release of pensions when someone 55 years old or over is made redundant. This is currently an explicit element of the Local Government Pension Scheme and not a KCC discretion unless it is as a result of a voluntary retirement application.

- 2.10 Examples have been modelled by independent bodies that indicate that employees earning £40,000 with long service would be restricted by this proposed cap. This could therefore have an impact on long serving employees in jobs such as: Social Services Senior Practitioner, Senior Accountant, Economic Development Programme Officer, Safeguarding Boards Co-ordinator.
- 2.11 The implementation of the cap will require secondary legislation and may also require changes to the Local Government Pension Scheme. As such there is no defined start date yet.

Tax & National Insurance Treatment of Termination Payments

- 2.12 Payments to employees upon termination of their employment can be made up of several different elements. These might include redundancy payments, pay in lieu of notice and compensation for loss of office. Some of these payments are subject to national insurance contributions and income tax whilst others are only liable to income tax on amounts above £30,000.
- 2.13 A review by the Office of Tax Simplification found that the situation surrounding deductions could be complex and cause confusion. It made a number of recommendations which has led the government to propose some reforms.
- removing the distinction between the tax and NICs treatment of contractual and non-contractual termination payments
 - aligning the tax and NICs treatment of termination payments
 - any tax and NIC exemption only relating to redundancy (including voluntary redundancy)
 - tax and NIC relief threshold based on length of service
 - anti-avoidance measures
 - a financial cap above which income tax should be payable in cases of wrongful or unfair dismissal (and should this be different if the payments are ordered to be made by a tribunal)
- 2.14 Consultation closed on 16 October 2015. However this is the first part of a five part Tax Consultation Framework. As such there is no indication of implementation date yet.

Trade Union Activity

- 2.15 The Government has been consulting on a number of elements of a proposed Trade Union Bill.
- 2.16 The Government is introducing a new ballot threshold of 50% for all industrial action. This means that at least 50% of those people entitled to must vote and industrial action can be taken on a simple majority of those voters. Also a new ballot threshold of 40% for taking industrial action in important public services is being introduced. This means that in those areas the union will

need the support of at least 40% of those entitled to vote. The Government is consulting on what constitutes an 'important public service'.

- 2.17 The Bill will also introduce a four month limit on a strike mandate after which the union will have to ballot again. Notice to the employer of strike action to increase from 7 to 14 days.
- 2.18 It is also proposed to remove the restriction in place that bans employers from hiring agency staff to cover essential striking employees.
- 2.19 The Government also announced in August 2015 that the Trade Union Bill will also stop public sector workers paying their union subscriptions straight from their salary. It has been suggested that the process is "outdated" and by stopping the practice it gives employees more control over their subscriptions.
- 2.20 Consultation has closed and any response will be assessed for its scope and impact. On the reading of this paper the Trade Union Bill will have been considered by a Public Bill Committee as part of its passage through the House of Commons.

3. RESOLUTION POLICY

- 3.1 In February 2015 KCC implemented a Resolution Policy. This policy replaced the Authority's Grievance and Harassment policies. The benefits of the new approach were stated as:
 - Speedier resolution achieved through greater emphasis on early intervention by the line manager and a mediation approach
 - Provides for a less adversarial approach to resolving conflicts
 - Reduces the likelihood of further damaging working relationships between the parties involved
- 3.1 The other aspect to this approach is that it readily supports the self-sufficient manager by helping them resolve matters more readily at the point the disputes arise. It also reinforces KCC's values in that it encourages people to be open, it means people have to be more open to challenge and accountable for the remedies identified.
- 3.2 In the first 6 months of the policy being in place there were relatively few cases. The HR Advisory Team (HRAT) supported 15 cases and three went straight to mediation (although one case resolved itself before mediation was required). This is fewer than half the cases experienced in the first six months of 2014/15.
- 3.3 Where mediation has been used the experience has been a very positive one with successful outcomes. HR continues to work with managers to encourage dialogue with employees to try and resolve matters without the need to go to a resolution meeting. Mediation is also being encouraged.

- 3.4 Future analysis of the volumes of cases will be covered by the case activity papers that the Committee receives.

4 FLEXIBLE WORKING

- 4.1 By doing things differently the County Council is able to transform the way the whole organisation operates and this has been a key response to the challenges it faces. As part of putting the customer at the heart of how services are designed and delivered it has required managers and staff to adopt new approaches to how and where they work.
- 4.2 The impact of this change helps bring services closer to customers and also helps optimise the use of KCC's estate. Another advantage of having more flexible approaches to work is it helps recruitment and retention. In many cases it allows people to manage work around home and/or caring commitments whilst enabling them to perform effectively without putting artificial time and location constraints in the way.
- 4.3 The County Council has had, for many years, a range of policies and procedures that support staff to work differently. This has been supported by developments in the technology available. HR has taken the opportunity to review its policy on flexible working to ensure it is fit for purpose. A revised policy to meet current and future demands is presented with this paper (Appendix 1). The Equality Impact Assessment is at Appendix 2.
- 4.4 The main focus of the Work Smart Policy is to move away from describing flexible working in terms of when we work (e.g. flexitime) but rather provide a broader framework that facilitates greater flexibility in terms of how and where we work as well. This helps enable, through effective performance management, optimal approaches to delivering services to the people of Kent in a way that suits the organisation but also supports our employees.
- 4.5 Other changes include:
- Emphasis on options for managers in delivering their service in an optimal way
 - Emphasis on proactive management of flexible working without the loss of employee entitlement
 - Strengthen aspects relating to diversity
 - Move emphasis away from just the statutory rights of employees
 - A change of title for the policy to "Work Smart"

5. RECOMMENDATIONS

- 5.1 Personnel Committee notes the intended and proposed statutory changes and the action being taken to ensure the authority will comply.
- 5.2 Personnel Committee notes the update on the progress of the Resolution Procedure.

5.3 Personnel Committee agrees the revised flexible working policy.

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Background Documents:

Personnel Committee – Resolution Policy February 2015