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To: Personnel Committee

Date: 13 October 2016

Subject: Recovery of Exit Payments – Waiver Policy

Classification: **Unrestricted**

SUMMARY: The Council is required to have a waiver policy that shows under what circumstances Kent County Council will determine whether to exclude a person from re-paying the exit payments they received if they left and were receiving a salary of £80,00 plus at the time. This report proposes a policy to meet KCC's statutory obligations.

1. INTRODUCTION

- 1.1 The Small Business, Enterprise and Employment Act 2015 facilitates the recovery of exit payments made to employees in the public sector earning over £80,000 per annum if they are re-employed in the sector within a year of leaving their previous employer. The Regulations were to be implemented no later than the 1 April 2016. However, this did not happen and the best intelligence available suggests they may be implemented in October 2016, but definitely will be during 2016.
- 1.2 The regulations cover a wide range of payments including redundancy, the employer costs of early release of pension, payments made in relation to a voluntary exit from employment, payments made under a settlement or conciliation agreement. Repayment is made to the organisation from which the employee exited.
- 1.3 The amount of the exit payment to be recouped will be reduced pro-rotta depending on the proximity of the individual's return to when they left the public sector. There is a formula in the regulations which determines how much should be repayed.
- 1.4 The regulations allow, in exceptional circumstances, for employers to waive the requirement for an ex-employee to repay the exit payment. This is in recognition that in certain circumstances the repayment could have a significant impact on people's ability to work in the public sector within twelve months of leaving.

2. WAIVER POLICY

2.1 Decisions on waiving the repayment require County Council approval. The examples of exceptional circumstances identified by the Government are:

- i) where there is an urgent need to recruit a particular individual to deal with a particular issue
- ii) where unexpected effects occur as a result of machinery of government changes
- iii) where the exit payment includes a settlement in respect of an actual or potential claim of employer fault
- iv) where recovery could cause 'undue hardship'.

2.2 The County Council is required to publish a policy which sets out the limited circumstances under which consideration will be given to waiving the repayment. The attached policy (Appendix 1) sets out the recommended approach to manage waiving the recovery of an exit payment.

2.3 The proposed waiver policy includes all the elements that the regulations recommend.

- a) Where there is an urgent need to recruit a particular individual to deal with a particular issue

This would only come into force if an employee had left KCC and another organisation was asking for KCC's help in mitigating a recruitment problem they may have. KCC may wish to reserve the right to waive the payment if the ex-employee is looking to be employed by a partner agency in a role that KCC has a vested interest in being filled on an urgent basis. It is not anticipated that there would be many circumstances where this waiver would be applied.

- b) Where unexpected effects occur as a result of machinery of government changes

There is no guidance on exactly what this clause means. However, KCC's interpretation is that this might apply if the government looks to make changes in public services that override previous decisions made requiring what was needed by a public sector organisation in terms of knowledge and skills. People may have been let go from an organisation but within a year their services may be required again. This would be an unusual set of circumstances for a waiver to be asked for.

- c) where the exit payment includes a settlement in respect of an actual or potential claim of employer fault

Ex gratia and severance payments remain in scope of the regulations. This is because these payments can be made in order to facilitate an exit as well as to settle potential claims of employer fault. The government is mindful that

this could adversely impact upon the ability to settle potential employment claims with a voluntary severance payment. Therefore, the regulations make it so that a power to waive repayment of any exit payment that was made in order to settle an actual or potential claim of employer fault over comes this.

d) where recovery could cause 'undue hardship'

It is difficult to set parameters for this as the circumstances that result in 'undue hardship' may be different depending on people finances and situation. County Council would need to take a decision made on a case by case basis. This element is complicated by the fact that if a person receives a pension as part of being made redundant the cost to the employer is included in the exit payment. This is not money the employee sees and depending on their length of service and previous salary could result in a large sum to repay. Therefore, if they do secure a job early in the 12 months and have to repay the exit payments to KCC it may be that the financial impact would be significant because of these costs. The inclusion of these costs would potentially have the impact of sidelining the person for a year before they can seek future work in the public sector.

2.4 As well as having a waiver policy when it is applied and an ex-employee is not required to make a re-payment the Council has to:

- (a) keep a record of the exercise of that power and the reasons for it for at least 12 months;
- (b) publish, as part of annual accounts or in a list published at the start of the financial year details of all the times in the preceding twelve months that they have exercised that power and the reasons for it.

3. RECOMMENDATIONS

- a) Personnel Committee are asked to agree the proposed waiver policy for the recovery of exit payments.

Background documents:

None

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