



Northumberland County Council

Staff and Appointments Committee

20 February 2023

Pay protection provision for Senior Managers

Report of the Interim Director of HR/OD

1. Purpose of the Report

The purpose of this report is to seek approval to agree to an adjustment of current provision for pay protection for employees at NCC Band 14 and above ie those on Senior Manager Terms and Conditions. The proposed adjustment would bring greater parity with provision for employees at NCC Band 13 and below (Pay Protection policy – appendix 1) and with other local government employers (Benchmarking – appendix 2).

2. Recommendations

1. Agree to a one-off arrangement for the payment of pay protection at a value of 100% protection for a period of 18 months. This will apply only to those impacted by the senior management review proposed to commence consultation on 21 February 2023.
2. Agree that a subsequent review of pay protection arrangements be undertaken with a view to harmonising provision across all employee groups.
3. Agree that a harmonised pay protection policy should aim to be affordable, supportive to employees and be benchmarked against other local government employers.

3. Key issues and background

- The purpose of pay protection is to provide an initial period of protection during which an employee is able to adjust to a reduction in earnings or other detriment incurred during the course of their employment as a result of changes to their contract.
- The council currently operates two separate approaches for the payment of pay protection. Subject to eligibility criteria, the pay protection scheme, last reviewed in 2013, makes provision for all employees at band 13 or below to receive their new earnings plus full protection for a period of 3 years. Full pay protection will only apply to an alternative role with a salary differential of no more than 15%. This roughly equates to one band.

- The scheme makes alternative provision for senior managers at band 14 or above to receive 100% of the difference between their previous earnings and their new earnings for a period of 6 months. The 2013 Pay Protection scheme is attached as appendix 1.
- For all employees, regardless of grade, the council is unlikely to propose that alternative employment is 'suitable' if there is a disparity between old and new roles of more than one band difference eg an individual displaced from a band 16 role may be offered a band 15 alternative role, however, a band 14 role would not be considered suitable.
- The author of this report cannot recall an incidence of the need for pay protection provision for senior managers to have been called upon in recent years. As a result, the disparity in provision has gone unnoticed and unutilised.
- This committee agreed to the establishment of a permanently appointed executive team in September 2022 and significant recent progress has been made in achieving this. Identified as a proposed 'next step' in the same report, was the need to review tiers 3 and 4 of the management structure ie all posts below the executive team at Head of Service level and above. There is a separate report to be considered by this committee to this effect.
- It is through the consideration of the implications for staff impacted by the tier 3 and 4 proposed structures that the anomalous pay protection arrangements have come to light.

4. Issues for consideration

- It is not consistent with an ethos of equitable treatment that staff groups be dealt with differently. In an effort to try to close the gap between the two schemes, it is proposed that a bridging arrangement be agreed until a more comprehensive review can be undertaken.
- An exercise to benchmark Northumberland County Council's policy against other local government employers has made it evident that no other local government employers were found to pay as little as 6 months pay protection (appendix 2).
- By contrast, Northumberland County Council appears in the top 3 for value of provision for those employees not on senior manager terms and conditions.
- To remedy the disparity and to bring the Council in-line with other employers, it is proposed that full pay protection be payable to those on senior manager terms and conditions for a period of 18 months, an increase of 12 months on the current provision of 6 months.
- This would be a time-limited, 'one-off' provision to support those detrimentally impacted by the tiers 3 and 4 review. It is expected that an increase in provision will aid retention of those affected and will allow a greater period of time for the council and the employee to seek alternative employment at a more appropriate salary level.
- Agreement to put forward this proposal has been granted in principle by the Council's consultative body for policy development – 'Policy Sub-Group'
- A wider review of pay protection arrangements will be undertaken to devise a sustainable, affordable scheme applicable consistently across all employee groups.
- Any proposal will be consulted on with recognised Trade Unions by sharing with the Policy Sub-Group and then ratified by JCC.

5. Scope

Consideration has been given to the affordability of the proposal. At present and subject to consultation, there are approximately 5 employees that may be subject to pay protection and would therefore benefit from the proposal to increase provision.

Implications

Policy	Oversight of HR Policies and Procedure
Finance and value for money	
Legal	<p>It is well-established by case law that the dismissal of an employee for redundancy may be unfair if the employer fails to make a reasonable search for suitable alternative employment. If an employer makes an offer of suitable alternative employment and the employee unreasonably rejects the offer, then they forfeit their entitlement to a redundancy payment (s141 Employment Rights Act 1996).</p> <p>An offer of alternative employment which constitutes a drop in pay will not be deemed to be a suitable alternative (meaning that if the employee refuses the offer, then they should be paid a redundancy payment if dismissed). Therefore, the ability to offer pay protection gives the organisation flexibility to make a wider range of options into suitable alternative employment.</p> <p>Case law also establishes that the duration of the alternative employment is relevant to whether or not the rejection of the offer is reasonable. Rejecting an offer of employment which lasted 2 months (Ireland v Fairfield-Rowan) was not held to be unreasonable, whereas the rejection of an offer of 12-18 months' work ((Morganite Crucible Ltd v Street) and 12 months' work (Chard v Hartlepool Borough Council) was held to be reasonable.</p> <p>Therefore, offering pay protection of 6 months duration is unlikely to make the role suitable alternative employment, whereas 18 months' pay protection is much more likely to be viewed by the Courts as suitable alternative employment. This gives the Council more scope to avoid dismissals and also to avoid litigation where dismissals cannot be avoided.</p>
Procurement	N/A
Human Resources	The HR implications of this proposal are outlined within the main body of the report
Property	N/A
Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A X	No equalities issues have been identified
Risk Assessment	
Crime & Disorder	N/A
Customer Consideration	N/A

Carbon reduction	N/A
Health and Wellbeing	The recommendations will support the health and wellbeing and financial wellbeing of affected staff
Wards	The recommendations not related to any particular ward but cover the whole of Northumberland.

Report sign off.

Authors must ensure that officers and Members have agreed the content of the report:

	Full Name of Officer
Monitoring Officer / Interim Director of Governance	Suki Binjal
Executive Director of Finance & S151 Officer	Jan Willis
Chief Executive	Helen Paterson in conjunction with the Interim Service Director for HR/OD
Portfolio Holder(s)	N/A

Appendices

Appendix 1 – Pay Protection Scheme 2013

Appendix 2 – Benchmarking of pay protection schemes

Background information

N/A

Linked reports

20 September 2022 Staff and Appointments report prepared by Director of HR/OD – providing details of the proposed executive structure.

Authors and Contact Details

This report has been prepared by the interim Director of HR & OD

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