

<b>Committee:</b>	Administration and Regulation Committee		
<b>Date of Meeting:</b>	16 December 2020		
<b>Subject:</b>	Voluntary Separation Scheme - Update		
<b>Report Author:</b>	Service Director, Human Resources and Monitoring Officer		
<b>Contact Officer:</b>	Anne Davies 01582 546330		
<b>Implications:</b>	Legal	<input checked="" type="checkbox"/>	Community Safety <input type="checkbox"/>
	Equalities	<input checked="" type="checkbox"/>	Environment <input type="checkbox"/>
	Financial	<input checked="" type="checkbox"/>	Consultations <input checked="" type="checkbox"/>
	Staffing	<input checked="" type="checkbox"/>	Other <input type="checkbox"/>
<b>Wards Affected:</b>	None		

## Purpose

1. This report follows the decision reached at Administration and Regulation Committee on 17 June 2020 to reintroduce the council's local Voluntary Separation Scheme.
2. At that meeting, the Service Director HR and Monitoring Officer was requested to report back to the committee 'in 3 months' time', to report on progress following discussion with Finance and the trade unions on the financial test.
3. This report provides the requested update.

## Recommendations

4. **The Committee is recommended to note the contents of the report**

## Background

5. The Voluntary Separation Scheme (VSS) was rescinded for the period 26 February 2019 until 17 June 2020. Following Administration and Regulation Committee's decision on 17 June and after the emergency budget was agreed on 14 July 2020 the VS Scheme was re-opened in August 2020.
6. One of the main barriers to applications being agreed through the scheme was the 'financial test' which stipulates that the cost of any redundancy under the scheme (including pension strain) must be recoverable in less than one year. Broadly the 'financial test' equates to a year's salary, including on-costs which vary by individual employee depending on pension fund membership.
7. This committee requested discussions with Finance and the Trades Unions around amending the 'financial test' to make it more generous, thus allowing more employees to pass this test and for their application for VSS to progress.

## Report

8. Since the VS Scheme re-opened in August 122 applications have been received. Of these, 35 met the 'financial test' and 64 did not meet the 'financial test'. There are 23 applications pending, in that Bedfordshire Pensions have yet to provide pension estimates and therefore the council is unable to assess the level of any pension strain and calculate whether these cases would meet the financial test.

9. There have been 75 applications from employees aged over 55 who are members of the LGPS.
10. Since August the council has approved 21 applications under the VS Scheme - 20 met the financial test and one employee agreed to reduce their contractual redundancy lump sum payment in order to meet the 'financial test'.
11. Also since August, 17 applications have been refused - 9 because of the 'financial test' and 8 because of the other tests stipulated within the scheme, namely the service or redundancy tests.
12. There have been 7 applications where the individual total exit cost exceeded £95k. One has been refused and the other 6 are in train.
13. The 'financial test' has been discussed with Finance and the trades unions. Whilst amending the 'financial test' to make it more generous would allow greater numbers to meet this test and to leave under the VS Scheme, it would also increase costs to the council for these exits, compared to the costs of the current arrangements. Therefore, taking into account the council's financial position, Finance did not support any change to the 'financial test' calculation.
14. In addition to the above, new legislation came into force recently which will limit future exit payments regardless of any locally agreed scheme or 'financial test'. Further legislative changes to the LGPS are due shortly and for this reason it is not appropriate or sensible to amend the 'financial test' at this point. Once all the legislation is in place, it may be unnecessary to make any changes or it may be that Finance remain unable to support any amendments until the council's financial position improves.
15. As a result of the legislative changes already in force and those due to be approved soon (see paragraphs 18 - 27 below), the exact configuration of exit payments that could be made to employees under the VS Scheme became very uncertain towards the end of October. Therefore, the VS Panel that met at the end of October decided to inform those applicants whose applications could **not** be approved (6 applications were refused) but decided not to formally approve any other applications (11 applications) until further legal advice had been obtained. It is worth bearing in mind that some applications for VSS were made on the basis of employees leaving the council as late as March 2021 – ie after all the related exit payments cap legislation could be expected to be in force.
16. Following receipt of legal advice, the council has received the necessary assurances and will now progress with the 11 applications that were 'paused' from the October panel. In addition, there are a further 68 applications whose outcome has yet to be determined – some from the original 122, have withdrawn their applications or left the council outside the VS Scheme. Any agreed VSS exits will be processed where possible, before the changes to the LGPS regulations are approved. For the vast majority of exits (which would not exceed the £95k cap), to this timeline, the council now has clarity on the redundancy lump sum payments and pension strain that can be paid.
17. It is likely that the new LGPS regulations will come into force early in 2021. Therefore, if the council continues to accept new applications under the VS Scheme, allowing for time to process the applications; obtain pension strain estimates; calculate the

'financial test', conduct VS Panels and to issue formal notice of redundancy – it is very likely that the new LGPS regulations will apply to those redundancies and to those exit packages. Therefore the council is not accepting any new applications under the VS Scheme until it can, with greater certainty, let employees know details of their exit payments (see also paragraphs 26 and 27 below) which will be payable after the LGPS regulations are changed.

## **Public Sector Exit Payment Cap – new legislation**

- 18.** Sections 153A-153C of Small Business, Enterprise and Employment Act 2015, inserted by the Enterprise Act 2016, enabled the Treasury to make Regulations imposing a £95K cap on public sector exit payments.
- 19.** By the end of September 2020, The Restriction of Public Sector Exit Payments Regulations 2020 (the Cap Regulations) had been approved by the House of Commons and House of Lords. The Regulations, Statutory Instrument 2020 No 1122 commenced on 4 November 2020, without either Guidance or Directions having been published, and before the end of the LGPS Consultation.
- 20.** The Cap Regulations mean that an exit payment that exceeds the £95K cap is prohibited. An exit payment includes the contractual redundancy lump sum payment that the council pays together with “any payment to reduce or eliminate an actuarial reduction in a pension on early retirement or in respect to the cost to a pension scheme of such a reduction not being made”.
- 21.** Whilst contractual redundancy lump sum payments at Luton, rarely exceed £95k in themselves, once combined with pension strain that can amount to many tens of thousands of pounds, particularly for those just over the age of 55, there are a number of employees whose exit packages will be affected at this point and many others if the proposals to amend the LGPS regulations are adopted unchanged.
- 22.** The consultation, on proposals to amend the LGPS regulations (designed to sit alongside the cap regulations) was published in September 2020, for response by 9 November 2020. Consultation outcomes are awaited.
- 23.** The consultation on the draft LGPS regulations themselves does not close until 18 December 2020.
- 24.** The Cap Regulations are very complex, further complicated by the misalignment (in terms of a timeline) of the necessary LGPS changes, all of which have been even further complicated by many summary, guidance and advisory documents, from the Treasury, LG Pension Scheme Advisory Board and the Government Actuary's Department.
- 25.** The council reopened the VSS in good faith during the summer. Even following publication of the Cap regulations it appeared unlikely that many employees, if any, would be affected by the regulations. It was only in September and throughout October when the LGPS consultation, guidance, advice and directions began to circulate, day by day, and in fact up until the end of October that the full extent of the LGPS proposals began to be fully understood.
- 26.** Very briefly, one of the main proposals to amend the LGPS regulations, if they are adopted unchanged, will mean that on redundancy, either a contractual lump sum

payment OR an unreduced pension will be payable, regardless of the overall £95k exit payment cap currently enshrined in the recently approved legislation. This will have a significant adverse effect on many in the workforce and makes it very difficult to predict with any certainty the eventual exit package that someone might expect under the VS Scheme if their application starts from now and concludes in 2 or 3 months. For this reason, no new applications are being accepted whilst the existing applications 'in train' are completed.

27. New applications under the VS Scheme will be accepted and processed once the timeline on the new LGPS regulations is clear and preferably once the regulations are approved and in force.

## Proposals

28. There are no direct proposals attached to this report.

## Appendix

None

## List of Background Papers - Local Government Act 1972, Section 100D

None

## Implications

Item	Details	Clearance Agreed By	Dated
<b>Legal</b>	There are legal implications associated with redundancy dismissals alongside the usual equalities and potential discrimination considerations and risks for the council.	Jasbir Josen	26 November 2020
<b>Finance</b>	There are no direct costs attached to this report.	Dev Gopal	1 December 2020
<b>Equalities</b>	There are no direct equalities implications attached to this report apart from the usual equalities and potential discrimination considerations and risks for the council.	Maureen Drummond, Cohesion and Equalities Adviser	26 November 2020
<b>Environment</b>			
<b>Community Safety</b>			
<b>Staffing</b>	The staffing implications associated with the VS Scheme have been discussed with the trades unions. Applications under the scheme are being dealt with in line with legal advice	Angela Claridge	1 December 2020

Item	Details	Clearance Agreed By	Dated
<b>Consultations</b>	Trades unions have been fully sighted on the VS Scheme and this has been an agenda item on the weekly meetings since 2 September 2020. The recent/pending legislation that is impacting applicants/ future applicants was discussed in detail with the Trades Unions on 28 October, 11 November and 25 November.		
<b>Other</b>			