

Agenda item: 

**Title of meeting:** Employment Committee

**Date of meeting:** 16<sup>th</sup> June 2015

**Subject:** Contractual Notice Period Arrangements

**Report by:** Jon Bell, Director of HR, Legal and Procurement

**Wards affected:** None

**Key decision:** No

**Full Council decision:** No

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## 1. Purpose of report

- 1.1 Members have asked for consideration to be given to revising the current policy for applying contractual notice periods when a member of staff leaves the organisation. Specifically, members have asked whether Pay in Lieu of Notice (PILON) should be the default position in the event of senior officers leaving the organisation through redundancy.

## 2. Recommendations

Members are recommended to:

- i) Note the impacts detailed in section 4 of this report, and the legal implications detailed in section 6, and in light of these to maintain the current position whereby PILON remains available as an option that can be exercised when circumstances make it appropriate to do so
- ii) Instruct the Chief Executive and/or Director of HR Legal and Procurement to consult with the Chair of this Committee whenever a chief officer departs the council, to decide whether PILON should be applied in that case. The relevant policy to be amended accordingly.

## 3. Background

- 3.1 The current Statement of Particulars for all employees allows for three different options to exit an employee from the organisation, depending on the circumstances. The three options are:

- i) the employee works their notice period;
- iii) the employee is placed on garden leave throughout their notice period and;
- iv) the employee leaves immediately and is paid in lieu of notice (PILON).

- 3.2 The current contractual arrangements give the Council maximum flexibility to manage employees through their notice period, whilst ensuring there is no breach of contract.
- 3.3 In most cases, employees are required to work through their notice period. This allows the following benefits to PCC and the employee:
- i) It provides value for money for the taxpayer, as the employee continues to provide the service for which they are being remunerated.
  - ii) It allows for the employee to provide an effective handover to colleagues, ensuring a more efficient service for customers.
  - iii) In a redundancy situation, it enables the employee to fully engage with the redeployment process, thereby mitigating the number of redundancies the council makes.
  - iv) It allows the employee to maintain continuity of service, in the event that they find another job in local government.
- 3.4 On occasions, employees have been put on "garden leave" for their notice period. This practise is most often used in the private sector, where a senior or key employee resigns in order to join a competitor. However, this is also used in a redundancy situation where the employee's work no longer exists following a re-organisation.
- 3.5 On rare occasions, PILON is paid to an employee for the period of his or her notice. This requires the employee to cease work immediately. This is most commonly used in redundancy cases where there has already been consultation prior to the dismissal. It is also used where there is a valid business reason for requiring the employment to be terminated immediately.
- 4. Implications of adopting PILON as the default contract position**
- 4.1 The positive impact of having PILON as a default position ensures the protection of PCC's intellectual property and protects sensitive and confidential data. In addition, the employees' exclusion from the workplace means that their power and influence within the organisation are effectively terminated.
- 4.2 Conversely, this could be seen as an inefficient use of tax payers' funds, as the employee is compensated for full pay and benefits equivalent to that as if working their notice.
- 4.3 There is no opportunity for the employee to give an effective handover, which could have a resultant impact on service delivery and on the employee team still intact.
- 4.4 There would be no opportunity for the employee to engage with the redeployment process and by setting PILON as the default option, the redeployment policy would effectively be void. This would put PCC at risk for

failing to mitigate redundancies, a requirement under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992.

- 4.5 Employees in the LGPS, nearing retirement age may be adversely affected as they would not be able to continue to pay pension contributions or AVC's, which would have continued if the employee was able to work their notice period or if placed on garden leave.
- 4.6 Additionally, by terminating employment with immediate effect, the employee may suffer detriment should they manage to gain alternative employment with an organisation under the Redundancy Modification Order, thereby not allowing that person continuous local government employment.

## **5. Reasons for recommendations**

- 5.1 In reality, due to the nature of Local Government employment, the risk of employees taking confidential or commercially sensitive information with them to their next employer is low. Therefore, the need to utilise either the PILON or garden leave clause, in these circumstances, is rare.
- 5.2 The current contractual arrangement allows for different circumstances to be managed effectively on a case by case basis, enabling the manager to make a judgement as to the most appropriate way for the employees' notice period to be managed.

## **6. Equality impact assessment (EIA)**

A preliminary Equality Impact Assessment has been completed.

## **7. Legal Implications**

- 7.1 The use of a PILON clause in any contract of employment is one that should ordinarily be used if an immediate exit of the employee is required. It is good practice to retain the option (to be exercised by the employer on a case by case basis) to terminate the contractual relationship on an immediate basis.
- 7.2 Clauses of this type should not be implied and if the option is to be exercised the employee should be told in writing that the option is being used and that the employee is receiving all their entitlements at the point of termination, thereby avoiding any wrongful dismissal claims.
- 7.3 With respect to amendment of any existing contracts caution should be used to avoid disputes arising and variation leading to any allegations that the amendment is enforced as that could lead to a breach enabling the employee to resign claiming a fundamental breach of a constructive nature.
- 7.4 The correct use of a PILON clause has the advantage of enabling the post termination obligations in the contract (eg restraints, covenants and restrictions) to be retained and operational.

7.5 The actual length of notice is dependent upon the contract and the statutory position in that the maximum notice is 12 weeks.

7.6 The exercise of a PILON clause is not to be considered or confused with a summary dismissal situation.

**8. Finance Comments**

8.1 HMRC advise that any reference to PILON in an employee's contract defines the payment as 'earnings' and therefore liable to tax and employers NI. As PCC contracts of employment already refer to PILON as an option, making this the default position does not change the financial liability.

8.2 The payment of PILON does have a small financial impact to PCC in terms of the loss of interest arising from the earlier payment of salary but, at current interest rates, this is likely to be a negligible amount.

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Signed by:

**Appendices:**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

.....  
Signed by: