THE WHITE HORSE FEDERATION

Retirement and Redundancy Pay for Teachers Policy

(Inclusive of Flexible and Early Retirement)

April 2009

1. Scope, Purpose and Principles

1.1 This policy sets out the arrangements for compensatory payments to be made to teachers in the event that their employment with the Council is terminated on grounds of redundancy or early retirement ahead of their normal retirement age.

1.2 In defining this policy, the council has sought to provide fair and affordable redundancy compensation payments and early retirement provisions for teachers, in accordance with employment legislation, age discrimination legislation and the Teachers Pension Regulations and associated Regulations, consistent with the equivalent policy for other Swindon Borough Council employees.

2. Relevant Statutory Provisions – 'deciding' and 'compensating' bodies

2.1 Section 37 of the Education Act 2002 provides that the 'deciding body' in respect of whether a teacher (or any other school employee) should receive compensatory payments in respect of their dismissal or to secure their resignation are:-

- The governing body of a school with a delegated budget in respect of a teacher employed to work within a school;
- The local authority in respect of an unattached teacher (i.e. a teacher employed in centrally managed services or in a Pupil Referral Unit)

2.2 The Local Authority is the 'compensating body' meeting the costs arising from the decisions made by 'deciding bodies'. The relationship between 'deciding' and 'compensating' bodies is defined in more detail in Section 37 as described below.

2.3 Under the provisions of Section 37(1) of the Education Act 2002, the governing body of a school with a delegated budgeted has the power to:-

- Determine whether a payment should be made in respect of the dismissal, or to secure the resignation of, a person employed to work at the school; and
- Determine that a person employed to work at the school should be awarded premature retirement

2.4 This power must be exercised within the relevant statutory framework of employment and education legislation, in particular the Teachers (Compensation for redundancy and Premature Retirement) Regulations 1998 as amended by the Teachers (Compensation for Redundancy and premature Retirement) (Amendment) Regulations 2006 and the current Teachers Pension Scheme Regulations.

2.5 Section 37(5) requires the costs of redundancy and severance payments to be met by the maintaining Local Authority unless there is good reason to charge the costs to the school's budget. Diverging from the Local Authority's policy on such payments or ignoring advice given by the Authority in respect of such payments is regarded as a good reason to charge the cost of redundancy and severance payments to a school's budget share.

2.6 Section 37(4) requires the costs of premature retirement to be met from the school's budget unless the Authority has agreed to meet.

2.7 Section 37(7) makes separate provisions in respect of staff employed at a school for 'community purposes' (as defined in Section 27 of the Act, including extended schools). In such cases the Authority will be able to reclaim payments for dismissal etc. of such staff from the governing body although it can waive this power.

2.8 The Local Authority will carry out its duties as the 'compensating body' in respect of redundancy compensation and early retirement in line with the policy provisions set out in the remainder of this document. It will meet the costs of redundancy compensation payments and premature retirement of teachers in accordance with this policy, subject to each case being notified to and agreed by the Group Director, Children (or her nominated officers). Any costs incurred by a governing body beyond the provisions of this policy or without the agreement of the Group Director, Children will be charged to the school's budget unless the Group Director, Children agrees to waive the requirement in a particular case.

2.9 The Authority's approach to severance payments is set out in a separate policy approved by the Council in 2004 (a summary is attached as Annex 1 to this report).

3. Normal Retirement Age

3.1 The Council's normal retirement age (NRA) is 65. However, teachers who are active members of the Teachers Pension Scheme (TPS) at 31 December 2006 can retire at age 60 without pension reduction and without capital cost to the Council. For new scheme members joining from 1 January 2007, the normal retirement age at which unreduced pension benefits can be taken is 65. This follows a change to the Teachers Pension Scheme Regulations in the autumn of 2006.

3.2 Under TPS regulations, employees aged between 55 and NRA who have been in pensionable employment on or after 30 March 2000 and meet TPS qualifying service requirements, will be able to take voluntary premature retirement and obtain early access to actuarially reduced pension benefits (ARBs).

3.3 In considering the exercise of their discretion in respect of awarding premature retirement, 'deciding bodies' should have regard to:-

1. the following advice set out in DfES Circular 15/97 "Early Retirement for Teachers" – see below

> DfES Circular 15/97 "Early Retirement for Teachers", para 15 "Considerations in granting premature retirement"
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> Considerations in granting premature retirement, which should be borne in mind include:-
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> - The capacity of the individual being considered for premature retirement to make a continuing contribution;
> - Whether the institution's strategic, academic and financial objectives can be met in another way;
> - Whether a 'stepping down' arrangement or part-time working would be appropriate (NB stepping down is no longer available under the revised TPS Regulations having been replaced by flexible phased retirement options)
> - The efficiency savings, taking into account the costs of the premature retirement;
> - How the individual's retirement would affect the age structure and promotion prospects of staff;
> - If the individual is not being made redundant, the prospects for finding a replacement, bearing in mind the recruitment problems in some locations and disciplines;
> - If a post is to be abolished, whether there are any other options. For example, it may be possible to arrange redeployment of the teacher by agreement with another school.

2. the full cost implications for the school and the Local Authority (see below)

3.4 An award of premature retirement requires the employer to meet the cost of "mandatory compensation" (i.e. the TPS will pay an actuarially reduced pension and lump sum based upon the member's pensionable service and the employer pays the difference so that the scheme member receives unreduced benefits for their lifetime – this cost to the employer is termed "mandatory compensation).

3.5 A 'deciding body' may also consider whether it wishes to award "discretionary compensation" in addition to accrued pension benefits. This is in the form of added years of service to generate increased pension benefits. The Authority will not award "discretionary compensation" in any but the most exceptional cases approved by the Group Director, Children in consultation with the Lead Member for Children Services. Normally, therefore, the full cost of "discretionary compensation" will be met by the school.

4. Redundancy

4.1 Proposed changes to school staffing structures that may lead to redundancy should be the subject of consultation with the Group Director, Children (or her nominated officers) before any redundancy costs are incurred. If this condition is not met the Group Director, Children may re-charge any costs to a school's delegated budget.

4.2 In the event of dismissal on grounds of redundancy, teachers with at least two years continuous local government service will be eligible to receive a redundancy compensation payment as follows:-

1. Teachers will receive a redundancy compensation payment based on the provisions of the Employment Rights Act 1996 (ERA). This payment will be calculated using the formula set in the ERA which comprises a defined number of weeks' pay based on age and continuous service at the date when employment is terminated.

The calculation will be based on continuous local government service with any other local authority or employer covered by the Redundancy Payments Modification Order.

Under the Teachers (Compensation for Redundancy and Premature Retirement) (Amendment) Regulations 2006, the Council will enhance the ERA provisions so that a weeks pay is calculated on the basis of an employee's actual weeks' pay rather than the statutory limit.

2. In addition to the redundancy compensation payment specified in (i) above, teachers aged 50 or over who have qualifying membership of the Teachers Pension scheme may, at the discretion of their employer, exercised by the 'deciding body' be awarded premature retirement and be able to receive immediate payment of an unreduced pension and lump sum based on their accrued contributory service at the date their employment is terminated.

'Deciding bodies' may wish to seek the advice of the Human Resources (Schools) team in considering the possibility and cost of awarding premature retirement, should always consider carefully the cost implications of awarding premature retirement and <u>must</u> seek the agreement of the Group Director, Children before making any commitment to award premature retirement. The costs arising from a decision to award premature retirement without the agreement of the Group Director, Children will be met from the school's budget.

The Group Director, Children will consider the organisational benefit, with regard to the guidance in Circular 15/97 (set out above) and the cost of any proposed premature retirement and its affordability within the resources available within the approved budget for redundancy compensation and premature retirement. A governing body will be expected to meet at least half the cost of "mandatory compensation" calculated over a five-year payment period. An example of this is shown at Annex 2.

5. Extended Schools

5.1 Where the school are proposing to make redundancies within the extended service provision different rules apply dependent upon how the extended services are funded.

5.2 In cases where the employee's salary is paid for from the schools delegated budget, then the local authority as the 'compensating body' will meet the costs arising from the decisions made, subject to local authority advice being sought and agreement reached.

5.3 Where the employee's salary is not paid for from the schools delegated budget then all costs arising from the decisions made will be met by the school and schools should ensure that they have sufficient funds to pay for any associated redundancy costs.

6. Redeployment as an alternative to Redundancy

6.1 An employee whose post is redundant will be eligible for consideration for redeployment to a suitable post in another school or service maintained by the Authority. In order to facilitate and support redeployment and reduce the necessity for redundancy, the Authority will provide financial support to schools or service offering a post to a redeployee who would otherwise have been redundant.

6.2 The Authority will make a one-off payment equivalent to one third of the employee's gross annual salary, capped at the level of the redundancy payment that the employee would otherwise have received. Each case will be subject to the approval of the Group Director, Children (or her nominated officer).

7. Early Retirement in the interests of the efficiency of the service

7.1 Employees aged 55 or over with qualifying membership of the TPS may be awarded premature retirement in the interests of the efficiency of the service and receive immediate payment of unreduced annual pension and lump sum based on their accrued contributory service at the date their employment is terminated.

7.2 Before awarding premature retirement in the interests of the efficiency of the service the 'deciding body' should consider

- The guidance in EfES Circular 15/97, and
- The cost implications for the school and Local Authority

7.3 The cost of "mandatory compensation" will be dealt with in line with the provisions within the section on Redundancy above.

8. Voluntary Early Retirement – Actuarially reduced benefits (ARBS)

8.1 Employees aged between 55 and ARA who have qualifying membership of the TPS may seek their employer's consent, at the discretion of the 'deciding body' to take voluntary premature retirement on Actuarially Reduced Benefits (ARBs). Where such a request is approved, the employee will be eligible to receive immediate payment of pension and lump sum, though this will be reduced to reflect the actuarial costs of the employer's decision to allow benefits to be accessed earlier than the employee's normal retirement age.

8.2 The amount of reduction to the pension and lump sum is determined by an actuarial calculation based on a formula determined by the Government Actuary's Department and included within the TPS Regulations.

8.3 An employer may only withhold their consent to an application for voluntary premature retirement on actuarially reduced benefits for a period of six months. 'Deciding bodies' may wish to seek the advice of Human Resources (Schools) team in considering requests for voluntary premature retirement on actuarially reduced benefits.

8.4 In exceptional circumstances an employee may seek to have the reduction to the pension and lump sum waived on 'compassionate' grounds. In considering such requests from its own employees, the Council as a 'deciding body' will apply the definition "inclined to pity or mercy" to determine whether reduction in pension benefits is to be waived. This approach is recommended to other 'deciding bodies'. In effect, such a request will mean that the employee will be considered for an award of premature retirement in the interests of the efficiency of the service and the 'deciding body' should have regard to the advice and conditions set out above.

8.5 Where an employee seeks the employer's consent to retire early on these grounds, the 'deciding body' should assess the request on its merits, taking into account the individual circumstances and the costs of "mandatory compensation".

8.6 The cost of "mandatory compensation" will be dealt with in line with the provisions within the section on Redundancy above.

9. Flexible Retirement (Phased Retirement)

9.1 Employees aged 55 with qualifying membership of the TPS may seek their employer's consent to take flexible retirement. Flexible retirement from age 55 may be possible without an employee having a break in employment provided that their pensionable salary reduces by 25% or more for at least 12 months. This could, for example, be because the employee has taken up a post of lesser responsibility or is working reduced hours. The employer will be required to provide confirmation of the reduction on the employee's pension application form. A t4acher may exercise this option twice before final retirement. An employee taking flexible retirement can continue paying into the TPS to build up further benefits.

9.2 Where such a request if approved, the employee will be eligible to receive immediate payment of pension and lump sum, though these will be reduced. The amount of reduction to the pension and lump sum is determined by an actuarial calculation based on a formula determined by the Government Actuary's Department and included within the TPS Regulations.

9.3 A teacher can decide how much he/she wishes to take of the benefits accrued up to the commencement of phased retirement up to a maximum of 75% of total benefits. Remaining service, which must be at least 25%, will be aggregated with any subsequent service accrued and be used in any future benefit calculation.

9.4 In considering a request for flexible retirement, the 'deciding body' should assess the request on its merits, take account of the school's/service capacity to accommodate the teacher in a lower graded post or part time position and may wish to seek advice from Human Resources (Schools) team before making a decision.

10. Ill Health Retirement

10.1 When an employee with qualifying membership of the TPS is deemed by the independent medical advisers to the Teachers Pension Scheme to be permanently incapable of performing the duties of their employment they will be entitled to an ill-health pension and lump sum.

10.2 Under the Teachers Pension Scheme Regulations, "permanently incapable" means that an employee is, in the view of the independent medical advisers to the TPS, incapable of teaching due to health problems until normal retirement age. Benefits will be determined on the basis of whether the employee is:-

- Incapable of undertaking any gainful employment, in which case Total Incapacity Benefit (TIB) is payable, or

- Incapable of teaching but capable of a range of other types of work, in which case Partial Incapacity Benefit (PIB) is payable

10.3 When these criteria are met, pension benefits are calculated as follows:-

(i) Total Incapacity Benefit – accrued pension benefit entitlements enhanced by half the prospective service to normal retirement age
(ii) Partial Incapacity Benefit – accrued benefits to the date of incapacity

10.4 Incapacity benefits are not reduced on account of early payment of benefits. TIB cases will be reviewed if the recipient's health improves and they become capable of working. PIB cases are not subject to review of entitlement.

10.5 The Teachers Pension Scheme determines entitlement to Ill Health Retirement Benefits. The 'deciding body' and 'compensating body' have no part in the decision or liability for costs arising from the award of Ill Health Retirement.

11. Summary of Federation policy on Severance payments to school staff

11.1 The Director of Education (now Group Director, Children) is authorised to approve cases in which the LEA will meet or contribute to the cost of severance payments* to school-based employees from centrally held resources, subject to the conditions set out below:-

- That in all but the most exceptional circumstances such funding will be limited to a sum equivalent to the employee's gross salary for three months, with any additional costs being charged to the delegated budget of the school concerned;

- That in the most exceptional circumstances the Director may, following consultation with the Lead Member for Children Services, approve funding beyond the amount specified above;

- That the Director is authorised to recharge all or some of the costs of severance agreements to school budgets when they are incurred by schools without the Director's approval or exceed the amount agreed by the Director;

- That the Director reports annually on severance payments made to school-based employees, including details of payments and the circumstances in which they have been made, subject to confidentiality clauses contained within any severance agreement.

(* in this context a "severance payment" is a payment made to secure the resignation of an employee in circumstances other than redundancy or early retirement)

The full policy document is available from the Council's Human Resources (Schools) Team.

12. Illustrative example of cost of Mandatory Compensation

Female teacher aged 58 years and 2 months at date of retirement

Reckonable Service	24 years at date of retirement
Pensionable Salary	£32,000
Pension	24 x £32,000 x 1/80 = £9,600 per annum
Lump Sum Payment	24 x £32,000 x 3/80 = £28,800 one off tax-free payment

1. "Mandatory Compensation" on pension

Pensioner awarded premature retirement by her employer at age 58 and 2 months received 0.893 of her pension from TP and the remaining 0.107 from her employer.

In this example this means TP pays £8.572.80 and her employer pays £1,027.20 of the total annual pension of £9,600

2. "Mandatory Compensation" on lump sum

Pensioner awarded premature retirement by her employer at age 58 years and 2 months receives 0.939 of her retirement lump sum from TP and the remaining 0.061 from her employer.

In this example this means TP pays £27,043.20 and her employer pays £1,756.80 of the retirement lump sum of £28,800.

Actuarially calculated "mandatory compensation" paid over 5 years

Actuarial factor for pension for a female aged 58 at last birthday on retirement is 17.90. Total sum due to be paid by employer over 5 years to discharge employer's "mandatory compensation" liability is

17.90 x £1,027.20 (employer's share of annual pension) £18,386.88

Plus employer's share of retirement lump sum
£ 1,756.80
Total "mandatory" compensation" payment to TP
£20,143.68

Paid over 5 years equates to an annual payment of £4,028.74, plus nominal compound interest for spreading payments over 5 years, bringing the total annual payment to, say, £4,050.

Under provisions of this policy, the cost of an agreed award of premature retirement in this case would be £2,025 per annum for 5 years to be met by LA and the same amount to be met by the school (when the 'deciding body' is the school's governing body).