

Report to the Cabinet

Report reference: C-047-2012/13
Date of meeting: 3 December 2012



Portfolio: Support Services
Subject: Car Leasing Review
Responsible Officer: Paula Maginnis (01992 564536).
Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

(1) As discussed in the report Cabinet agrees that the current Car Leasing Scheme is amended as follows:

- (a) Employees on the current scheme will be allowed one further lease of 3 years, after which the scheme will close without further compensation;
- (b) The Council will make its contribution based on a maximum of £4,000 per annum including insurance with all costs over the maximum to be met in full by the employee;
- (c) The Council's contributions will be capped as follows:
 - (i) Year 1 – 70%;
 - (ii) Year 2 - 60%; and
 - (iii) Year 3 – 50%;

(N.B. These reducing contribution rates are the upper limits. Employees who currently qualify for the lower rates of Council contribution will retain their current rate and will be unaffected until the cap falls below their current rate.)

- (d) Where an accident or theft occurs any hire car costs will be met by the insurer, subject to paragraph 11 (c);
 - (e) Where a hire car is required for any other reason the employee will be responsible for the cost; and
 - (f) The employee will be responsible for all outstanding contributions and costs if they wish to return the car early (including the Council's costs);
- (2) Cabinet agrees to implement a Green Car Salary Sacrifice Scheme with the following key features:
- (a) The Scheme is cost neutral to the Council with no contribution towards the cost of an employee's lease payments;

- (b) The Scheme is open to all employees, subject to paragraph 28;**
 - (c) The car list is restricted to vehicles with emissions of 120g/km or less;**
 - (d) The scheme will cover vehicle road tax, routine maintenance, reasonable repair costs, insurance, homestart/recovery breakdown, roadside assistance and replacement vehicle in qualifying circumstances;**
 - (e) Early Termination fees:**
 - (i) In cases of redundancy the Council will include any early termination payments in the business case for the redundancy; and**
 - (ii) If the employee decides to resign or retire from the Council they can either purchase the car or will be liable for all early termination costs; and**
 - (f) The Council will use the 'saved' employer's national insurance and pension contributions to build a contingency fund to cover any payments required due to an employee's maternity/paternity/adoption leave; and**
- (3) Cabinet receives a verbal report from the Chairman of the Joint Consultative Committee presenting comments from the Committee and staff regarding the proposals contained in this report.**

Executive Summary:

The Council's Car Lease Scheme has been in existence since 1986 and was set up to assist with recruitment and retention issues facing the Council at that time. The Scheme is available to all full time employees who are designated as essential car users and those at Assistant Director level and above.

Every employee on the Scheme agrees to forgo their entitlement to the National Joint Council (NJC) essential car user allowance. Employees make a contribution towards the cost of the lease which is deducted directly via payroll with the Council's contribution paying the balance of the lease cost. Employee and Council contributions vary.

The cost of the current car lease scheme (as at 2010/11) was £293,000 but after taking out support service recharges the actual cost to the Council was £255,000. Of this, approximately two thirds falls on the General Fund with the remainder falling to the Housing Revenue Account. The cost of leased mileage in 2010/2011 was £14,000, therefore total cost of the scheme was £269,000.

In summary it is proposed that the current car leasing scheme is amended as follows;

- Employees on the current scheme will be allowed one further lease of 3 years, after which the scheme will close without further compensation.
- The Council will make its contribution based on a maximum of £4,000 per annum including insurance. All costs over the maximum will be met in full by the employee.
- The Council's contributions will be capped as follows;
 - Year 1 – 70%
 - Year 2 - 60%
 - Year 3 – 50%

These reducing contribution rates are the upper limits. Employees who currently

qualify for the lower rates of (Council) contribution will retain their current rate and will be unaffected until the cap falls below their current rate.

- Where an accident or theft occurs any hire car costs will be met by the insurer, subject to paragraph 11 (c).
- Where a hire car is required for any other reason the employee will be responsible for the cost.
- The employee will be responsible for all outstanding contributions and costs if they wish to return the car early (including the Council's costs).
- In the main the other terms and conditions of the scheme will remain the same.

The cost to the Council for this Scheme, if all current participants continue on the scheme, will be £187,000, £164,000 and £141,000 in years 1 to 3 respectively, with the scheme will closing completely in 2016.

Staff and the trade unions were initially consulted on proposals as set out in Appendix 1 and their comments were considered during discussions for the current proposals set out in this report.

Employees and the trade unions have been formally consulted on the final proposals and a verbal report will be made by the Chairman of the Joint Consultative Committee to the Cabinet at the meeting.

In addition to amending the current scheme it is proposed to introduce a Green Car Salary Sacrifice Scheme for all employees and details are set out in paragraphs 22 to 34.

Reasons for Proposed Decision:

The phasing out of the scheme over 3 years for eligible employees gives such employees a very reasonable notice period to the end of the scheme so that they have time to put in place alternative arrangements. The continuation of the scheme as suggested with the Council's contribution totalling a maximum of £7,200 in each case represents the full and final compensation for loss of a financial benefit that is being made by the Council.

The Council can also introduce the benefit of a Green Car Salary Sacrifice Scheme to all employees at nil cost to the Council. This meets recommendation 5.2 set out in the Council's Green Fleet Review 2009.

Other Options for Action:

The Cabinet could close the scheme on a phased basis from now, (i.e. only running the scheme until the end of the current leases, it should be noted that a significant number have been extended) however, the Council would need to consider alternative compensation arrangements for employees on the current scheme for the loss of a financial benefit.

The Cabinet could have other amounts for the ceiling and the Council's contributions. However, staff and the trade unions have already been consulted and the current proposal is considered the best option.

The Cabinet could decide to leave the scheme unaltered. This option was disregarded as unsustainable in the current economic climate.

Report:

1. The Council's Car Lease Scheme has been in existence since 1986. Essentially it was set up as a recruitment and retention package available to all full time employees who

are designated as essential car users and those at Assistant Director level and above.

2. Every employee on the Scheme agrees to forgo their entitlement to the National Joint Council (NJC) essential car user allowance. Employees make a contribution towards the cost of the lease which is deducted directly via payroll with the Council's contribution paying the balance of the lease cost. The employees' contributions vary as follows;

- The Chief Executive, Deputy Chief Executive, Directors, Assistant Directors and essential users who travel 5,000 business miles and more = 15%;
- Essential users who travel between 2500 and 4999 business miles = 25%;
- Essential users who travel less than 2500 business miles = 40%;
- Employees who are currently on the scheme, and were as a result of a previous senior management review no longer eligible under the current criteria, but allowed to retain the right to remain on the scheme = 55%.

3. The cost of the current car lease scheme in 2010/11 was £293,000 but after taking out support service recharges the actual cost to the Council was £255,000. Of this approximately two thirds falls on the General Fund with the remainder falling to the Housing Revenue Account.

4. The cost of leased mileage in 2010/2011 was £14,000. Therefore total cost of the scheme was £269,000.

5. A report was initially submitted to CEF (precursor to Management Board) in 2010 to consider potential savings of reviewing the Scheme. Subsequently, Management Board in 2011 agreed that a review should take place, that legal advice be obtained and that an officer Working Group was set up. It agreed that the Working Group would consist of:

- Paula Maginnis (HR);
- Peter Maddock (Finance); and
- Ruth Rose (Legal).

6. The Working Group presented a report to Management Board in September 2011 where it agreed that it could not take any further decisions in relation to the Review due to governance issues as the majority of the Board are members of the Scheme. It was agreed that the Acting Chief Executive would discuss the issue with Cabinet Members to decide how to progress the Review.

7. At the beginning of 2012 the then Leader of Council approved a Leader Decision, which set out the terms of reference for the review. Councillors Wyatt and Knapman were appointed to progress the Review as they were the most suitable Portfolio Holders. A subsequent decision has been taken and the current lead members are Councillors Whitbread, Ulkun and Wyatt.

8. During January to March 2012 several meetings took place between the Working Group and Members. As a result, initial options for staff and trade union consultation were agreed. A copy of the initial proposal is attached at Appendix 1 for information.

9. Formal consultation was undertaken with the trade unions and staff for 90 days and was completed on 18 June 2012. Following this and the subsequent appointment of the Chief Executive in October 2012 amended proposals have been submitted to staff and the

trade unions to obtain their view. A verbal report by the Chairman of the Joint Consultative Committee will be made to the Cabinet at the meeting presenting the comments of staff and the Committee regarding the proposals.

10. In addition to a revised car lease scheme Members and Officers have explored the possibility of setting up a Green Car Salary Sacrifice Scheme, at no cost to the Council whereby all staff will be eligible. Details of the Scheme are set out in paragraphs 22 to 34.

Proposed Scheme

11. The proposed amendments to the current Car Leasing Scheme are as follows:

(a) **Eligibility**

- The scheme will be closed to new employees and existing essential car users not currently on the scheme.
- The scheme is phased out over three years. Only those employees on the current scheme will be eligible to continue on the scheme for one further 3 year lease.
- At the end of this lease no further leases will be agreed and the scheme will close for the employee with no additional compensation paid for loss of the benefit.

(b) **Contributions**

- A ceiling of £4,000 annual rental and insurance will apply
- All eligible employees will contribute:
 - Year 1 - 30% towards the annual rental and insurance (on first £4,000)
 - Year 2 – 40% towards the annual rental and insurance (on first £4,000)
 - Year 3 – 50% towards the annual rental and insurance (on first £4,000)
- The Council will contribute;
 - Year 1 - 70% towards the annual rental and insurance (on first £4,000)
 - Year 2 – 60% towards the annual rental and insurance (on first £4,000)
 - Year 3 – 50% towards the annual rental and insurance (on first £4,000)
- Eligible employees will contribute 100% of the rental above £4,000.

These reducing contribution rates are the upper limits. Employees who currently qualify for the lower rates of Council contribution will retain their current rate and will be unaffected until the cap falls below their current rate.

For the avoidance of doubt those employees currently in receipt of Council contributions of 85% and 75% the new contribution rates will apply from year 1. Employees in receipt of Council contributions of 60% will remain unaffected until year 3 when the employees' contributions will increase to 50%. Employees in receipt of Council contributions of 45% will remain unaffected by the new contribution rates.

The £4,000 ceiling will apply to all employees on the revised scheme regardless of their contribution rates.

(c) **Key Terms and Conditions of the Scheme**

- The insurance excess will remain at £250
- Where a repairable accident or theft occurs and an employee requires a hire car this will be met by the insurer. Where a total loss occurs and a hire car is

required, the employee will continue to make their contribution as will the Council. Any difference in cost will be met by the employee.

- Where a car is required if the lease car is not available for any other reason the cost will be met by the employee,
- When the employee leaves/wishes to return the car before the end of the lease they will be responsible for all outstanding contributions and costs (both the employee's and the Council's).

12. Should an employee on the current scheme no longer wish to continue on the scheme when their current lease comes to an end they will be entitled to purchase their current vehicle or return it back to the lease company.

Initial Consultation

13. As a result of the initial consultation with staff and the trade unions, some of their feedback has been reflected in the current proposals. For example:

- Staff suggested that a £4,000 ceiling p.a. is applied and the employee contribution set at 30%, this has been included in the proposals.
- They suggested that the insurance excess remains at £250, this has been included.
- They suggested that the scheme is closed to new employees, this has been included.
- If the scheme was closed completely a long notice period would be provided, this has been included.

Compensation

14. The phasing out of the current Scheme over 3 years for eligible employees gives such employees a very reasonable notice period to the end of the scheme so that they have time to put in place alternative arrangements. The continuation of the scheme as suggested with the Council's contribution totalling a maximum of £7,200 in each case represents the full and final compensation for loss of benefits that is being made by the Council

15. This proposal has been made in the light of Counsel's advice. Meaningful consultation has been undertaken, representations made have been considered and taken on board.

16. Employees may not be wholly satisfied with the proposal but in the event that any challenge is made to this decision, provided that the Council can demonstrate that it has made clear attempts to vary the Scheme in a lawful and fair way which reduces financial hardship on employees it should be able to successfully defend such action. The Council is able to demonstrate that it has acted both reasonably and lawfully by setting stepped increases to the employee contributions, phasing out over 3 years and by the additional proposal to introduce a Green Car Salary Sacrifice Scheme at nil cost to the Council, (to provide an opportunity to access a new car without applying for finance or funding a deposit).

Costs

17. The costs to the Council of the revised Scheme, assuming all employees currently on the Scheme continue on the Scheme, will be significantly less and by the inclusion of a ceiling will in effect fix the Council contribution toward each car at £2,800, £2,400 and £2,000 in years 1 to 3 respectively. This will be the case providing the cost of each car including insurance exceeds the £4,000 per annum ceiling.

18. When comparing to the cost as at 2010/11 of £255,000, savings of around £68,000 in year 1, £91,000 in year 2 and £114,000 in year 3 should be achievable. Since 2010/11

insurance cost have increased somewhat but given that most vehicle costs breach the proposed ceiling of £4,000 per annum the effect on the Council's costs is minimal.

19. The operation of the scheme is intended to be as it was previously which means that the Council will continue to pay the Class 1(a) National Insurance contributions of around £24,000 per annum as before.

20. If and when all users leave the scheme and revert to being essential users the savings to the Council will be those achieved in year 3 plus additional saving of around £14,000 in leased car mileage payments and the £24,000 in class 1(a) National Insurance. However it is known that a number of participants in the leased car scheme do not claim mileage, and under the revised scheme or if they left the scheme would presumably claim.

21. The savings as a result of amending the scheme and assuming that all those on the scheme transfer to the new scheme are shown in the table below. In year 4, after the scheme has been phased out, employees who are eligible will revert to the essential user car allowances and rates. The table shows the savings relating to lease car scheme.

Estimated savings based on current vehicles	Savings year 1	Savings year 2	Savings year 3	Savings year 4 onwards
	£'000	£'000	£'000	£'000
General Fund	42	56	70	156
Housing Revenue Account	26	35	44	99
Total	68	91	114	255

Green Car Salary Sacrifice

22. It is proposed to introduce a Green Car Salary Sacrifice Scheme which all employees will be able to access, subject to paragraph 28. A Salary Sacrifice Scheme is where salary is sacrificed by an employee in return for a non-cash benefit, before tax and national insurance (NI) is calculated. The employee formally varies their terms and conditions when sacrificing part of their salary.

23. It is proposed that the Green Car Salary Sacrifice Scheme will enable employees to lease a car for a period of 3 years and in return will sacrifice part of their salary to pay for the lease. At the end of the lease agreement they will be given the opportunity to purchase the car or hand it back to the lease company.

24. The car will be treated like a company car whereby Benefit in Kind (BiK) tax is payable and tax is based on CO2 emissions and the P11d value of the car. The benefit of a salary sacrifice scheme will enable employees to save tax, NI and pension contributions. The Council will also pay less in NI and pension contributions. These contributions will be used to set up a contingency fund as set out in paragraph 32. The fund will be reviewed annually and in the event the fund becomes greater than what is required the money will go back to the Council.

25. It is proposed that the Council appoints a company called Tusker to provide the Council's scheme. They will be appointed through an existing local government framework agreement let by North Yorkshire County Council (Southend Borough Council are providing their car lease scheme through this agreement using Tusker). Using this framework will enable employees to access discounted rates for a car. Also the agreement is restricted to cars with emissions of 120g/km (or below) assisting the Council meet recommendations set

out in the Green Fleet Review 2009.

26. The proposed scheme will be very similar to the current car lease scheme in that the agreement will be for set period of 3 years. The main features of the scheme are outlined below:

- The scheme will include road fund license, routine maintenance, reasonable repair costs, insurance, homestart/recovery breakdown, roadside assistance and replacement vehicle in the event of prolonged breakdown.
- As part of the agreement the employee will need to agree at the outset the total mileage for the contract and an additional payment may be levied on the employee if the mileage of the vehicle exceeds the authorised mileage and it could not be proven that exceeding the limit had been caused by increased business use.
- Early termination fees will apply if an employee wanted to exit the lease prior to the end of the agreement
- End of lease options will include purchase, hand the car back, apply for a new car

27. The main differences to the existing car lease scheme:

- It is proposed that the new scheme will not be subsidised by the Council and this will have an impact on the monthly payments employees will make. However a significant proportion of the additional costs will be offset by reduced tax and national insurance contributions, and where applicable, pension contributions
- As the scheme will not be subsidised employees claiming work related mileage will receive standard mileage rates of 45p per mile as opposed to 13p per mile for company cars.
- Cars will be restricted to those with an upper limit of emissions of 120g/km

28. The salary sacrifice scheme will be eligible to employees who meet the following criteria:

- have an hourly rate above the National Minimum Wage after salary sacrifice and all other deductions are made
- are not at risk of redundancy
- are not at risk for a TUPE transfer
- are not at risk of dismissal
- are not on maternity leave/pregnant at the point of applying
- have a contract that extends for the duration of the scheme
- have a full UK driving licence for 12 months or more

Early Termination

29. If an employee leaves part way through a contract due either to resignation, retirement or redundancy an early termination fee will be payable. In the case of a resignation or retirement the employee will be responsible for all costs. In a redundancy situation the costs will be included in the business case for the redundancy and the employee will not be liable for any early termination charges, however they will be liable for vehicle damage and any excess mileage.

30. If an employee resigns from the Council within the first 6 months following delivery of the car, the employee will be liable for the termination cost. Also, if the employee decides they no longer want the vehicle (and continues to be employed by the Council) they will be liable for any termination costs.

31. Employees will have the option to purchase the car.

Maternity/Paternity/Adoption Leave Contingency Fund

32. Usually during maternity/paternity/adoption leave an employee will be subject to a period of unpaid leave and therefore will not have salary to sacrifice. Therefore the Council will be liable for the payments during this period. It is proposed to use the savings from the employer's national insurance and pension contributions to set up a contingency fund to cover such payments. Subject to an annual review, in the event that the fund becomes greater than what is required the money will go back to the Council.

33. If the employee is pregnant at the car delivery date they will be liable for the Council's costs. Any calculations needed to determine pregnancy dates will be based on the due date given on the MATB1 Form.

Long Term Absence

34. If reductions cannot be taken from an employee's salary due to long term absence, payments will be suspended until their return to work. On their return the Council will continue to reduce their salary in line with the agreement and the missed reductions will be added to the end of the agreement.

Resource Implications:

Set out in the report.

Legal and Governance Implications:

Legal advice has been obtained throughout the review.

Safer, Cleaner and Greener Implications:

The principles of recommendations 5.2 and 5.3 of the Council's Green Fleet Review have considered during this review. The benefit in kind tax makes less efficient cars unattractive to employees as will the proposed ceiling on the Council's contribution. In addition the Green Car Salary Sacrifice Scheme only includes those cars with CO2 emissions of 120g/km or below.

Consultation Undertaken:

Employees and trade unions were consulted in March – June 2012 and November 2012.

Joint Consultative Committee was consulted on 26 November 2012.

Background Papers:

1. EFDC Green Fleet Review 2009
2. Leaders Decision ref: 4/2011/12. Dated 11 January 2012
3. Individual consultation responses.
4. Counsel's Advice – Exempt Information. Claim to Legal Professional Privilege under Para 5 of Schedule 12A Local Government 1972 (as amended).

Impact Assessments:

Risk Management

Counsel's advice has been taken throughout to ensure that the Council acts lawfully in bringing the current car lease scheme to an end. By setting phased increases to the employee contributions, phasing out the scheme over 3 years with the Council continuing to make contributions, the proposal to introduce a Green Car Salary Sacrifice Scheme for all employees together with meaningful consultation being undertaken, with Staff and Trade Unions having been consulted twice, means that the Council will be able to demonstrate that it has acted both reasonably and lawfully. Whilst the Council can not prevent a challenge to the decision being made it is considered in the light of the legal advice received that the Council will be in a good position to successfully defend any such claim.

It is proposed to use the savings from the employer's national insurance and pension contributions to set up a contingency fund to cover payments made due to maternity/paternity/adoption leave.

The Council will be required to pay the lease payments of staff who cannot sacrifice their salary when they are on half pay or nil pay due to sickness absence. In these cases on the employee's return the Council will continue to reduce their salary in line with the agreement and the missed reductions will be added to the end of the agreement.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.