

## **Hambleton District Council**

**Report To:** Cabinet

**Date:** 4 October 2022

**Subject:** **LGR Staffing Matters**

**Portfolio Holder:** Leader of the Council  
Councillor M Robson

**Wards Affected:** All Wards

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### **1.0 PURPOSE**

- 1.1 The purpose of this report is to seek authorisation to enter into a settlement agreement with the Chief Executive Officer as part of the implementation of the transition to a Unitary Authority for the County of North Yorkshire and approval of the terms thereof.
- 1.2 Under the agreement, the Chief Executive will remain employed by the Council until 31st March 2023 but, as requested by North Yorkshire County Council, his employment will cease on that date and he will not transfer to North Yorkshire Council on the transition date of 1st April 2023.
- 1.3 The arrangement is part of measures to ensure for the benefit of the people of Hambleton, the efficient and effective exercise of the Council's functions for the remaining period of its being and a well-managed handover to North Yorkshire Council.
- 1.4 Cabinet is asked to approve the proposed settlement and to recommend that Council approve it at its meeting on 11<sup>th</sup> October 2022.

### **2.0 BACKGROUND AND CURRENT POSITION**

- 2.1 On 1<sup>st</sup> April 2023, Local Government Reorganisation (**LGR**) for the County of North Yorkshire will be implemented under the North Yorkshire Structural Changes Order 2022. Hambleton District Council will cease to exist and North Yorkshire Council will assume responsibility for this Council's functions, and those of the other Districts and the County Council in North Yorkshire, as the unitary authority for North Yorkshire.
- 2.2 Under Regulation 3 of the Local Government (Structural and Boundary Changes) Staffing Regulations 2008 ("the 2008 Regulations") all employees, including the Chief Executive and the Chief Officers, employed by the Council immediately before 1 April 2023 will automatically have their employment transferred on their existing terms and conditions to North Yorkshire Council on that day.

- 2.3 Notwithstanding that, implementation of LGR is causing uncertainty and concern to many members of our staff at all levels and is thus having an increasingly detrimental impact on the Council's ability to sustain high quality services, delivery of its major initiatives and Capital Programme. The Council has, because of LGR and the review preceding it, lost a number of senior posts, which has already put strain on the Chief Officer Group. These include the Director of Economy and Planning, the Director of Finance and Commercial, and the Chief Planning Officer.
- 2.4 At the Cabinet meeting on 5th July 2022, it was proposed that retention arrangements be implemented comprising an Employee Incentive Scheme designed to retain not just the Chief Officer Group but also to consider extending this to selected other senior staff.
- 2.5 In order to avoid any potential conflict of interest in looking at the issues arising for senior officers, there have been appointed independent, external advisers to provide advice on staffing, legal and finance issues arising from LGR who have advised me in relation to this proposal. They are:
- HR- Busola Osibogun
  - Finance – Peter Lewis
  - Legal - Walker Morris LLP who have also sought advice of a leading QC, Dan Stilitz
- 2.6 On reconsideration with the external advisors including Counsel, the view taken is that a more focused proposal, compared to that suggested on 5th July, aimed at the Chief Officer Group as an identifiable group at greatest risk (in terms of any suitable role and the risk of leaving before the transition date) is likely to be substantially more resilient. The earlier proposition, even with a more limited range of post-holders, was too extensive and risked challenge on equality and other grounds in its application. Accordingly, a different strategy was required to ensure value for money and fairness. The rationale for this is based on a number of factors:
- 2.6.1 it is apparent that staff below Senior Management Team level are much more likely to gain comparable roles in the North Yorkshire Council;
- 2.6.2 conversely, the position in relation to the Chief Officer Group and their prospects of obtaining comparable and suitable employment in North Yorkshire Council is a much more challenging prospect.
- 2.7 Central Government's Guidance encourages Councils affected by LGR to use powers available to them under retirement and other compensation provisions to help manage an orderly transition particularly where it concerns post holders where there is a real risk that they are likely to lose their post and/or are real concerns that nothing suitable will be available in the new organisation i.e. commensurate position, seniority, remuneration and role. This is particularly relevant to the Chief Officer Group.
- 2.8 This report focuses on the position of the Chief Executive because the implementation of LGR by North Yorkshire has progressed to a stage where his future position with North Yorkshire Council is clear.

- 2.9 On 21st July 2022, as Leader of the Council, I received a letter from the Leader of the County Council (for the new North Yorkshire Council) which amongst other things encouraged this Council to make its Head of Paid Service/Chief Executive redundant prior to the transition date.
- 2.10 Further, on 22nd July 2022, the Council's independent legal and HR advisors met with senior officers of NYCC. NYCC officers reiterated that request.
- 2.11 North Yorkshire Council on 17th August, following a competitive process, appointed the current NYCC Chief Executive (Richard Flinton) as the Chief Executive for the unitary Council.
- 2.12 Although it is the firm view of the independent legal advisors and the QC that all staff of the Council, including the Chief Executive, would transfer under TUPE on their existing terms and conditions, given the stance of North Yorkshire County Council and the appointment of a Chief Executive for the unitary County, it was felt that it would be sensible and prudent to hold negotiations with the Chief Executive to establish terms on which he might be prepared to leave the employment of the Council on 31st March 2023 and forgo his right to transfer to the North Yorkshire Council on 1st April. These negotiations have been led by the independent HR advisor with support from the other independent advisors and this report sets out below the proposed settlement reached because of those discussions.
- 2.13 In reaching the terms of the proposed settlement account has been taken of the relevant legal powers of the Council, of the terms and conditions of the Chief Executive's employment contract, and of the Council's relevant current policies set out in its Pay Policy Statement, its Restructure and Redundancy Policy and Procedure, its Retirement Policy and Procedure and its LGPS Employer Discretion Policy, although those policies were not drafted with LGR in anticipation.
- 2.14 Equally, the requirements to secure value for money and to ensure the continued efficient delivery of the Council's functions have been taken into account. The proposed settlement will secure that we retain the Chief Executive until the Council ceases to exist and that he will be able to provide the management needed during the transition to ensure effective delivery. Further, it will avoid any dispute with the County during this transition period and/or after implementation of LGR regarding his employment status, which would potentially be a distraction from delivery of the current Council's services as well as the County's existing services to the people of Hambleton.
- 2.15 It is anticipated that following the appointment of the Chief Executive of the unitary authority the future structure to be implemented will start to be developed and in particular that the management structure and post holders will become known in the Autumn. At that point, it will be possible to establish the impact on other members of Hambleton staff and in particular on the current Chief Officers of the Council. As that becomes clearer, if it is considered appropriate, further discussions will be held with affected staff and further reports may be brought to Cabinet and then submitted to Council.

### **3.0 PROPOSED ARRANGEMENTS WITH THE CEO**

- 3.1 The proposal is that the Council will enter into a legally binding Settlement Agreement with the Chief Executive Officer.
- 3.2 Under that Agreement, it is proposed that the Chief Executive will remain in post until 31st March 2023 (the proposed Termination Date) and will continue to work and be paid in accordance with his current contract of employment.
- 3.3 His employment with the Council will therefore terminate on 31st March 2023 and he will waive any right to transfer to North Yorkshire Council under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).
- 3.4 He will receive on termination a redundancy payment calculated with reference to Hambleton's discretionary redundancy policy as outlined in the Council's Restructure and Redundancy Policy. In addition, in consideration for signing a compromise agreement an additional sum, the Termination Payment, will be paid. There will also be payment for any outstanding holiday accrued and not taken at the date of termination. The calculation of these payments is set out in Appendix 1 (contained in the confidential section of the agenda) and the total cost to the Council is in paragraph 5.4. There are no associated pension costs as this member of staff is not of pensionable age.
- 3.5 In consideration of the Termination Payment, the Chief Executive will waive relevant legal claims against the Council and/or North Yorkshire Council arising from the termination of his employment including his ability to enforce any claim in respect of TUPE. Any payments received are therefore in full and final settlement of any employment related claim that as an employee he may have.
- 3.6 The agreement will be signed once approved but will require to be reaffirmed at the Termination Date to ensure that any claims that could arise between signing the agreement and the Termination Date are waived. The Chief Executive will also receive independent legal advice as to the terms and effect of the agreement (this is a legal requirement of a valid settlement agreement and a contribution towards legal fees is included as a term of the agreement).
- 3.7 The Termination Payment (or part thereof) will be conditional on the terms of the Settlement Agreement, most notably that the Chief Executive remains in post until 31st March 2023 and continues to meet the performance standards set for that year.

### **4.0 COMMENTS OF INDEPENDENT HR CONSULTANT**

- 4.1 The redundancy payment shown above has been calculated with reference to Hambleton's discretionary redundancy policy as outlined in the Council's Restructure and Redundancy Policy.

- 4.2 The Employment Rights Act stipulates that a statutory formula should be applied when calculating redundancy payments. However, in line with the Local Government (Early Termination of Employment) (Discretionary Compensation) England and Wales Regulations 2006 (as amended) the Council has the authority to make discretionary redundancy payments up to a maximum of 104 weeks based on an employee's actual weekly pay at the point of being made redundant.
- 4.3 NYCC have made it very clear that Hambleton should make its Chief Executive, Head of Paid Service, redundant as the North Yorkshire Council has now appointed a new Chief Executive. The sum resulting from the calculation in paragraph 3.4 is the entitlement due under Hambleton's redundancy provisions
- 4.4 In consideration for signing a compromise agreement, which will protect Hambleton and North Yorkshire Council against any claims at tribunal, the proposal is to pay an additional compensation payment, identified as the Termination Payment in paragraph 3.4 above.
- 4.5 The calculations for these sums are in Appendix 1 (contained in the confidential section of the agenda).

## **5.0 COMMENTS OF INDEPENDENT FINANCIAL ADVISER**

- 5.1 There are two broad matters that Members need to consider in forming a view about the recommendations set out in this report: firstly, as mentioned in paragraph 6.13 below, is the benefit of the proposed settlement commensurate with the cost; secondly, are there sufficient funds within the Council's budget and/or reserves to make the payments without impacting services?
- 5.2 In considering the first matter (benefit commensurate with cost), Members are asked to take account of the following factors:
1. The Chief Executive Officer has a six-month notice period and has already proven his commitment over many years to HDC. Leaving without giving six months' notice is a breach of contract.
  2. North Yorkshire County Council, while forming North Yorkshire Council, has clearly indicated that it wishes predecessor authorities to seek to make their respective Chief Executives redundant.
  3. The Council is negotiating this settlement agreement in the context of the safety net of the TUPE regime. Therefore, should it not be possible to arrive at a suitable agreement with the Chief Executive Officer, he may leave HDC within the next six months, perhaps for another role; he may transfer to the NYC on existing terms and conditions; he may seek an alternative exit route.
  4. If the Chief Executive did transfer to the new authority and was made redundant then some of the costs referred to in this report would be a cost to the public purse anyway.

5. There is a Performance Related Pay (PRP) scheme in place, which provides for a payment of up to 20% of salary for those chief officers, including the Chief Executive, who are in post at the year-end and have met the pre-agreed performance criteria. This does, to a limited extent, operate as a retention incentive.
6. To give some context, the maximum statutory compensation for an unfair dismissal, is currently capped at £93,878, for the worst cases, where an employer has been found to have ignored policy and process in the treatment/dismissal of members of staff.
7. The potential negative reputational impact on the Council of apparently large sums being paid to individuals upon leaving the Council.
8. Whether the additional costs of a settlement package bring commensurate additional certainty of outcome for the Council.
9. That this proposed settlement agreement is likely to set a precedent for any other agreements particularly for the chief officers of the Council – see 2.15 above.

5.3 It is for Members to consider and debate these matters in the context of their intimate knowledge of the strategic and operating environment of the Council before coming to a conclusion.

5.4 The second matter is funding the proposed settlement agreement, while also taking a future view as to how other such agreements for the chief officers might be funded. This settlement will cost the Council approximately £225,000 including an estimate of National Insurance Contributions (NICs). Funding for this can be found from the Local Government Reorganisation Reserve (LGRR), which currently has a balance of £497,000. £200,000 from salary underspends was added to this reserve as at the first quarter monitoring report – Cabinet 6<sup>th</sup> September 2022 – and it is intended to add further sums as the opportunity arises. However, this will be influenced by budget being released by the departure of staff offset by the need to secure temporary additional staff, which generally cost more than permanent staff. Therefore there is no guarantee that this reserve will grow.

5.5 While there is reserve funding for this proposed settlement, should similar agreements be reached with other chief officers then funding for these may need to be drawn from the General Reserve if the LGRR is not sufficient at that time.

5.6 Other LGR commitments known at this time are backfill for staff being released early to set up the new unitary authority and the consultancy support engaged to assist with this report and related matters. At this time, it is expected that the sum required for both purposes will not exceed £0.5m, which can be contained within the General Reserve sum.

5.7 Therefore, it can be concluded that there are sufficient funds available to make a payment for this and potential future settlements, while highlighting that, of course, those funds, once spent, will not be available to either Hambleton District Council or to North Yorkshire Council for the provision of services.

## 6.0 COMMENTS OF INDEPENDENT LEGAL ADVISOR

- 6.1 The proposed settlement and in particular the Redundancy and Termination Payments comply with the powers of the Council under the Local Government (Early Termination of Employment) Discretionary Compensation (England and Wales) Regulations 2006 (**Compensation Regulations**). The Compensation Regulations provide that local authorities have discretionary powers to award compensation to employees who are eligible for the Local Government Pension Scheme and whose employment has terminated by reason of redundancy or in the interest of efficiency. Such payments must not exceed in total 104 weeks' pay including any redundancy payment and enhanced redundancy payment under the Compensation Regulations.
- 6.2 The Compensation Regulations provide that the Council be required to formulate and keep under review a policy, which applies in relation to both redundancy payments and lump sum compensation. The Council's policies on such matters including the Council's Restructure and Redundancy Policy (Redundancy Policy), its Retirement Policy and Procedure (Retirement Policy) and its LGPS Employer Discretion Policy have been reviewed in this context.
- 6.3 The Retirement Policy is not relevant in this case.
- 6.4 The Redundancy Policy provides that an enhanced redundancy payment under Regulation 5 of the Compensation Regulations can be made, based on actual weekly pay (rather than the capped statutory formula) and, depending on age, an employee could be entitled to three weeks' pay for each full year of service. Redundancy payments are capped at 104 weeks' pay.
- 6.5 Although the Redundancy Policy currently does not provide for compensation under Regulation 6 of the Compensation Regulations its LGPS Employer Discretion Policy does so.
- 6.6 The Council is also required under Section 38 of the Localism Act 2011 (2011 Act) to prepare for each financial year a Pay Policy Statement ( PPS) which must include inter alia:
- (f) The approach to the payment of chief officers on their ceasing to hold office under or to be employed by the authority, “*
- 6.7 Section 41 of the 2011 Act provides that, in making a determination relating to “the remuneration of or other terms and conditions applying to a chief officer of the authority” the authority “must comply with its pay policy statement for the financial year in making the determination”.

- 6.8 The Council's current PPS states that payments on ceasing to hold office will be made in accordance with the Redundancy Policy. It also states that no such payments are anticipated in the current financial year. Accordingly, we would suggest that in addition to revising the Redundancy Policy as indicated in paragraph 6.5 to refer to payments of compensation under the LGPS Employer Discretion Policy, the PPS is amended to clarify that payments may arise from LGR. These proposed amendments are set out in Appendix 2.
- 6.9 There is also the Government Guidance on Special Severance Payments (SSP Guidance) to consider when assessing any severance arrangements.
- 6.10 The Guidance does not apply to statutory and contractual redundancy payments or payments made in accordance with policies made under Regulation 7 of the Compensation Regulations such as the Redundancy Policy and the Employer Discretion Policy. Therefore, it would only be strictly relevant in respect of matters outside of those areas.
- 6.11 Where the Guidance applies, it states that there needs to be a convincing case for making such a payment and that such payments are in the interests of taxpayers. One of the circumstances listed under the SSP Guidance for an exceptional Special Severance Payment includes the circumstance where the existing statutory or contractual entitlements, or both, are insufficient to facilitate an exit or to offer sufficient compensation for loss of employment or office.
- 6.12 It is arguable that the settlement proposal circumstances are exceptional in that they seek to maintain the effective management necessary to maintain the Council's functions up to its ceasing to exist and that they also seek to assist a smooth transition to the new structure.
- 6.13 The Council must act properly in the exercise of its powers – both as to the process of making decisions as well as the facts and law it has regard to. The Council's decisions must be lawful and in this context must have close regard to the Council's fiduciary obligation to its taxpayers and be able to demonstrate it has acted appropriately to secure demonstrable value for the Council and that the payments made are proportionate to the benefit to be obtained and are not gratuitous in nature.
- 6.14 The Council should assume that approval of any settlement proposal and its implementation would attract scrutiny in part because this is a substantial sum however; such matters are normally confidential in accordance with the terms of a Settlement Agreement.
- 6.15 The Council must be satisfied in any decision to approve a settlement proposal that it is soundly based in law, is based on sound financial advice for which budget provision can be made available and that it is a necessary and proportionate response to the concerns raised in this Report and the objectives sought. In the latter regard, the Council's external HR Advisor has provided the relevant assessment and expertise to suggest the settlement proposal on the grounds referenced in this Report is a necessary and proportionate response.

- 6.16 Having regard to each of the above, the Council has the power to consider implementing retention arrangements including the use of voluntary exit arrangements. On the basis that the need for and terms and scope of the proposed arrangements have been thoroughly assessed and evidenced by the external HR Consultant who considers the same to be reasonable and proportionate and necessary to secure the objectives identified in this Report, then it is open to Cabinet to consider implementing those arrangements that are within its authority and recommending any others to Council for adoption.
- 6.17 The Monitoring Officer has been consulted in connection with this Report and is satisfied that relevant legal and procedural matters have been addressed.

## **7.0 EQUALITY/DIVERSITY ISSUES**

- 7.1 Equality and Diversity Issues have been considered however, there are no issues associated with this report. We have considered the Equality and Diversity impact of introducing retention arrangements and or exit arrangements for the Chief Officer Group, however, there are no issues associated with this report.

## **8.0 HEALTH AND SAFETY ISSUES**

- 8.1 Local Government reorganisation will bring with it concerns as to additional workload, stress, anxiety as to future role, change in organisational culture and future prospects. This will likely raise well-being concerns for staff, particularly those that may be most at risk in terms of a change in their role, remuneration or loss of post.

## **9.0 RECOMMENDATIONS**

- 9.1 That Cabinet:

- (1) approves that the Council enters into a Settlement Agreement with the Chief Executive Officer on the proposed terms;
- (2) delegates power to the Deputy Chief Executive and the Director of Law and Governance (Monitoring Officer) jointly in consultation with the Leader to approve any subsidiary matters necessary to finalise the Agreement provided such matters do not contravene any of the matters set out in this report;
- (3) funds any payments under the Agreement in the current financial year from the Council's Local Government Review Reserve; and
- (4) recommends that the Council approve it as the appropriate response of the Council and passes similar resolution and makes the necessary amendments to any Pay Policy Statement, Redundancy and Restructuring Procedures or Retirement Policy that may be required to implement the agreement as set out in Appendix 2.

Cllr M Robson  
Leader of the Council

**Background Papers:** Statement of Pay Policy 2022/23  
Restructure and Redundancy Policy and Procedure  
LGPS Employer Discretion Policy

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