

Hambleton District Council

Report to: Cabinet

Date: 22 November 2022

Subject: **LGR Staffing Matters**

Portfolio Holder: Leader of the Council
Councillor M S Robson

Wards Affected: All Wards

1.0 PURPOSE

- 1.1 The purpose of this report is to seek authorisation to enter into a settlement agreement with such of the Hambleton Chief Officer Group that does not wish to transfer to North Yorkshire Council 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 proposed basis of agreement, the Chief Officers will remain employed by the Council until 31 March 2023 when their employment will terminate. They will forego their right under TUPE to transfer to North Yorkshire Council on the transition date of 1 April 2023.
- 1.3 A settlement will be entered into by mutual agreement. The basis for such grounds is explained elsewhere in this report.
- 1.4 A settlement is within the lawful powers of the Council and approved policy.
- 1.5 It is considered to be a reasonable and proportionate response of the Council in the context of the challenges faced by the Council and the individual officers as a result of LGR and in particular the appointment to senior management posts by NYC.
- 1.6 Cabinet is asked to approve the proposed approach to settlement agreements and to recommend that Council approve it at its meeting on 22 November 2022.

2.0 BACKGROUND AND CURRENT POSITION

- 2.1 Cabinet has previously received a report in relation to the position of the Chief Executive. The recommendations in that report were approved unanimously and subsequently approved by Council on 18 October 2022. Subsequently the Council and the Chief Executive have entered into a settlement agreement on the approved terms.
- 2.2 For completeness I repeat in this report some of the detail from that earlier report so that Members have the information in the one document.

- 2.3 On 1 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.
- 2.4 Under Regulation 3 of the Local Government (Structural and Boundary Changes) Staffing Regulations 2008 ("the 2008 Regulations") all employees of the Council in post immediately before 1 April 2023 will automatically have their employment transferred on their existing terms and conditions to North Yorkshire Council on that day, subject to their agreement. Under TUPE any officer of HDC can elect not to transfer, in which case their employment will cease on 31 March 2023 without any compensation unless specifically agreed.
- 2.5 Implementation of LGR is causing uncertainty and concern to many members of our staff at all levels and is having an increasingly detrimental impact on the Council's ability to sustain high quality services, delivery of its major initiatives and capital programme and supporting essential transitional arrangements. The Council has, because of LGR and the review preceding it, lost a number of senior officers, 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.
- 2.6 Additionally, particularly at Chief Officer level, LGR is placing a substantial additional burden for securing orderly transition to NYC including spawning a number of work streams alongside current day to day demands for service management.
- 2.7 It is a stated fact in the business case for reorganisation by NYCC that financial savings are anticipated from the reduction in the number of management teams and associated support across the 8 local authorities affected.
- 2.8 Senior management teams are considered to be particularly vulnerable in this exercise. Districts have already been asked by NYCC to make their Chief Executives redundant – an approach challenged robustly by ALACE (the organisation representing Chief Executives) as well as by legal advice taken by other Districts and this Council.
- 2.9 In October and early November the County Council provided further information on the nature of the roles at Tier 2 and 3, its ring fencing criteria and their application to this Council's Chief Officers (other than the Chief Executive). The County Council also commenced a consultation exercise with the staff concerned. This information was also shared with the Council. It has raised serious questions about the fairness of the process, the consistency of application of published criteria and overall fit with employment law as it affects whether employment offered within the new Council represents suitable alternative employment for Hambleton officers.

- 2.10 The Hambleton District Council (HDC) Chief Executive has raised a number of concerns with the approach of the County Council with regards to the filling of posts in the new management structure. Following the appointment of the North Yorkshire Council Chief Executive, proposals for Tiers 2 and 3 have been published and a ring fencing process is being conducted against criteria developed and applied by the County Council. Officers have been ring fenced against one or more roles for which role descriptions have been supplied – at the same time, as mentioned above, the County Council is consulting on the process. Chief Officers are currently being invited to submit statements of suitability for the role(s) to which they have been ring fenced and should they choose to apply interviews will be held prior to the Christmas break. For a number of roles only NYCC staff have been ring fenced for now.
- 2.11 The HDC Chief Executive letter to the senior officer at NYCC managing the process expressed a number of detailed concerns including how this affected individual officers as well as compliance with Guidance. NYCC responded on 3 November and does not accept there is any failure on its part to manage the process fairly, consistently or in accordance with law, guidance and its own stated criteria. Further, it does not accept there are flaws in the process, the dissimilarity in roles, status, experience between current posts and new posts (such that the new posts are not suitable alternatives) and the potential for unfairness and inconsistency in application of their ring fencing criteria.
- 2.12 Whilst it publicly asserts that there are jobs for all post transition it has not to date addressed whether it considers the current ring fenced roles to be suitable alternative employment (and if so why) and on what basis the unspecified (and yet to be determined) roles for staff not appointed from the ring fence exercise can possibly amount to suitable alternative employment when the substantive management posts appear not to.
- 2.13 By way of example of the concerns raised by the Chief Executive:
- 2.13.1 The County Council has assessed the basis of comparability of pay between new role and current role disregarding contractual entitlement to Performance Related Pay (PRP) and the history of payments to Hambleton officers. By way of explanation NYCC offered examples which appear to be entirely discretionary (honoraria) and/or temporary (market supplements) which are entirely different to the Council's contractual scheme, which is taxable pay. Taking this into account would impact how NYCC should have applied the ring fencing to certain officers and posts and of course would be part of an employee's assessment of whether a role is suitable alternative employment on the basis of pay/remuneration. Car allowances which are a significant element of the Hambleton package are also ignored for these purposes.

- 2.13.2 The County Council appears not to have implemented much of the guidance issued in respect of LGR – particularly the Government’s 2008 Staffing Guidance. By way of response NYCC commented that the Guidance was made in 2008 and did not particularly address the position of continuing versus new Councils. However this remains the current relevant Guidance and the Guidance specifically provides for continuing authorities such as NYCC to demonstrate transparency and competitiveness in senior management positions save for limited appointments to posts on exceptional and temporary grounds.
- 2.13.3 Asking Chief Officers to assert their suitability for unsuitable roles is contrary to ACAS guidance which expects the (incoming) employer to explain in reasonable detail the similarity and differences to the affected employees.
- 2.13.4 The criteria for ring fencing created by NYCC do not represent the tests of what is suitable alternative employment in law. This creates significant tension for Chief Officers affected by ring fencing given rhetoric in some quarters that by not pursuing or accepting unsuitable ring fenced roles they may risk being dismissed without redundancy terms.
- 2.13.5 Proposing that colleagues who do not pursue or accept ring fenced roles (on the basis they are not on any reasonable basis suitable alternative employment) are moved into temporary unspecified roles without in all fairness acknowledging that such roles are unlikely to amount to suitable alternative employment.
- 2.14 Based on the information provided by NYCC Hambleton Chief Officers have reviewed the ring fenced roles against a range of recognised characteristics for suitability as alternative employment (such as skills, responsibilities, status, experience and pay) and this assessment has been shared with this Council and submitted by way of their response to NYCC. Each of the responses contend that there is a poor degree of fit between the ring fenced posts identified for them and their existing posts in terms of the application of NYCC set criteria and on the basis that would be applied to test suitable alternative employment in law.
- 2.15 Absent some material changes there is a reasonable basis on which to assume that the ring fenced roles do not meet the tests of suitability and that whilst they may transfer under TUPE and whilst there may be a role (yet to be determined) post TUPE such roles have yet to be created and such roles are less likely to be suitable alternative employment than those currently in the establishment for the new Council.
- 2.16 At the time of writing this report the consultation period has not closed however some conversations and exchanges of correspondence have taken place between NYCC and affected officers. These do not resolve the treatment of PRP and car allowance as part of the Chief Officer remuneration package which is excluded from the assessment of base pay which underpins NYCCs ring fencing approach.
- 2.17 Along with other concerns as to material changes in reporting lines, additional responsibilities for which the officer has no or little (current) experience, reduction in status the suitability of ring fenced roles and the future employment status of the officers affected remains a serious concern.

- 2.18 This Council is advised that, absent any current proposals from NYC in relation to the affected staff in such circumstances, there is no legal obligation to commence formal consultation or other processes as to redundancy including declaring someone to be at risk.
- 2.19 The timing of implementation of redundancy measures is a matter for the new Council and creates potentially a further significant period of uncertainty for these staff post transfer when there is no substantive, suitable alternative role for them. This is creating a high degree of anxiety and potential distraction from current duties including the need to secure an effective transition.
- 2.20 Alongside the process adopted by NYCC I can report to Cabinet that ALACE (the Association of Local Authority Chief Executives) has written in strong terms to NYCC in August and October 2022 on the topic of NYCC's handling of staff transfer particularly (but not exclusively) in relation to the position of Chief Executives. Some points to share from that correspondence which can be overlaid to the position of other Chief Officers are:
- 2.20.1 The legislation simply does not discriminate between different senior officers of the district councils even though it is obvious to ALACE and any other observer that not all of them will find a permanent berth in the new Council and that the majority of them are likely to face redundancy. Also that the costs of dealing with this would arise simply as a result of the legislation and not because of any decision of the new Council.
- 2.20.2 ALACE sought confirmation from NYCC that it was a matter for choice of the relevant officer that they could TUPE or if they wished to leave as a consequence of reorganisation then they could do so 'on the basis of redundancy or otherwise as agreed'.
- 2.20.3 Government Guidance (the Staffing Guidance) was highlighted in that it emphasised the potential for redundancy arising as a result of restructuring and refers to paragraph 6.4.4 in the Guidance (ought to be 6.3.4) of an HR Director who does not apply for or fails to secure a role of HR Director in the new organisation. The Guidance continues that the HR Director would transfer under TUPE and that the new Council would then be required to identify other alternative posts if possible similar to the previous post and suitable to the individual's level of skills, experience and qualifications. If no suitable alternative posts were available it is likely that the individual's employment would be terminated by reason of redundancy.
- 2.20.4 That the s24 consent regime does not apply to settlement agreements made on the basis that payments fall due on the last day of an outgoing council even if the payment is actually made later.
- 2.21 I understand other Districts have also taken legal advice which I am advised is consistent with the advice this Council has received save that we are advised that no statutory redundancy consultation process has been formally invoked.
- 2.22 Notwithstanding that the consultation process is continuing and the response referred to above to the Chief Executive, I continue to have significant concern on these matters – including for the position our Chief Officer Group finds itself in.

- 2.23 These are factors and consequences which it is fair and reasonable for this Council to have regard to in terms of whether or not it is appropriate to take any action and if so the nature of such action.
- 2.24 Uncertainty and potential disruption arising from the current reorganisation is something which affects all Council staff. Working with NYCC, unions and workplace representatives much is being done to explain and assure staff the vast bulk of whom will be assimilated into NYC performing the same or very similar roles on day one. This is not the case for members of the management team in particular or potentially at other levels if there are similar roles in several authorities being absorbed into one role in NYC.
- 2.25 Cabinet will recall that independent external advice has been sought including seeking the advice of a leading KC, Dan Stilitz. This is to provide the Council with robust and independent advice including on any measures it was minded to take in relation to LGR.
- 2.26 Counsel recognised that the Chief Officer Group is an identifiable group at greatest risk (in terms of any suitable role, the risk of leaving before the transition date and the anxiety and stress impacts associated with the burden of LGR activities and uncertainty of their future position).
- 2.27 Central Government's Guidance encourages Councils affected by LGR (this includes both this Council and NYCC in this context) 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.
- 2.28 It is against this backdrop that I was asked to meet with the Chief Officer Group affected (which excludes the Chief Executive) to hear their concerns and in the course of further discussion their wishes and proposals.
- 2.29 On a subject to contract and without prejudice basis I have, together with the Chief Executive and supported by independent advice, had discussions with each of the relevant officers. The outcome of those discussions confirms that each of them would wish to leave the employment of the Council on 31 March 2023 and forgo their right to transfer to the North Yorkshire Council on 1 April 2023.
- 2.30 The officers are genuinely unsettled, anxious and genuinely hold the view that there is no suitable role for them based on their engagement with the County Council and that they are at best looking at supernumerary positions pending redundancy. They are also concerned to settle these anxieties for the good of their health and to allow them to focus on delivering high performing services, a well-managed and orderly transition and the best support that can be offered both to their staff and to members of this Council in that period. They each wish to settle these matters by mutual agreement on the basis of agreeing to leave the service of the Council on 31 March 2023, waive their right to enforce any TUPE related entitlements and in so doing remove any prospect for any potential claims or entitlements which they may have against NYC in due course as a result of redundancy or otherwise. They will also waive any entitlement to statutory or discretionary payments in excess of the compensation sum.

- 2.31 LGR creates exceptional circumstances which justifies consideration being given to measures by way of a response to these circumstances and concerns expressed which will provide the environment to help promote and secure the effective and efficient conduct of the Council's affairs in these important final stages before transition from a public services as well as employer perspective. Such measures must also be proportionate, safeguard the Council's interests and take account of guidance – this is addressed further below.

3.0 PROPOSED ARRANGEMENTS

- 3.1 In discussion with the Chief Officers they have made it clear that they do not wish to press for severance arrangements which would appear to be unreasonable in the circumstances, indeed none of the four officers has sought to press for enhanced termination payments under the Hambleton District Council Restructuring and Redundancy policy which would be the basis of any settlement terms post transfer to the new Council.
- 3.2 I consider that it is in the interests of this Council, its successor and its role as employer of these senior staff who have given good service to the Council (in total the officers have worked 100 years for Hambleton) to give consideration to arrangements that may be made. In doing so the Council needs to be mindful of the requirements to secure value for money and to ensure the continued efficient delivery of the Council's functions which can be facilitated by minimising or removing the risk of distraction caused by the uncertainty and anxiety of current circumstances which would potentially impact delivery of the current Council's services to the people of Hambleton.
- 3.3 Please see the Confidential Annex for the negotiated proposal for the Chief Officer Group. This shows that the total cost of the proposed settlements being made is just under £770,000 the majority of which (£463k) represents actuarial strain payments to North Yorkshire Pension Fund.
- 3.4 In proposing settlement by mutual agreement account has been taken of the relevant legal powers of the Council, of the terms and conditions of the Chief Officers' employment contracts, their periods of service, 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. Due account has been taken of the matters raised with the County Council and its response as well the assessments made by officers of the ring fenced roles with their current position.
- 3.5 It remains open for the officers to apply for and subsequently accept any position with the new Council or indeed any other employment in which event the arrangements proposed will not in accordance with the terms of the mutual settlement agreement apply. This safeguard reflects policy guidance in this respect also. In such circumstances the individual officer(s) would not be entitled to receive payments as detailed within this report.
- 3.6 The proposal is that the Council will enter into a legally binding Settlement Agreement with each Chief Officer who does not wish to transfer and wishes to terminate their employment with the Council.

- 3.7 Under that Agreement, it is proposed that the Chief Officer will remain in post until 31 March 2023 (the proposed Termination Date) and will continue to work and be paid in accordance with their current contract of employment.
- 3.8 Their employment with the Council will therefore terminate on 31 March 2023 and they will opt out of the transfer to North Yorkshire Council under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).
- 3.9 It is proposed that they receive a compensation payment under Regulation 6 of the Local Government (Early Termination of Employment) Discretionary Compensation) (England and Wales) Regulations 2006 in the amounts shown in the Confidential Annex.
- 3.10 There will also be payment for any outstanding holiday at the date of termination as is legally required on termination of employment. These terms are without prejudice to the assessment of performance related pay under current contractual terms. The assessment of these payments is in accordance with the 2006 Compensation Regulations.
- 3.11 Each of the officers (given their age) and/or dependent on the basis of any settlement entered into with the Council is entitled under the Local Government Pension Scheme Regulations 2013 to draw their pension.
- 3.12 Again, dependent on the basis of the settlement the Council will be bound and/or has discretionary power to agree to pay actuarial strain which arises to North Yorkshire Pension Fund. This total is included in the aggregate sum in the financial section below. These detailed figures for each officer are also shown in the Confidential Annex.
- 3.13 In consideration of the settlement agreement any officer would opt out of TUPE, waive relevant legal claims against the Council and NYC arising from the termination of employment including their ability to enforce any TUPE related entitlements. Any payments received are therefore in full and final settlement of any employment related claim arising from LGR and the Council's response to it which such employee may have (though to date none have been notified).
- 3.14 The agreement would be signed once approved but would 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. Each officer will also receive a modest agreed sum towards independent legal advice (paid for by the Council) 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).
- 3.15 The Termination Payment (or part thereof) will be conditional on the terms of the Settlement Agreement, most notably that the officer remains in post until 31 March 2023 and continues to meet the performance standards set for that year.

4.0 COMMENTS OF INDEPENDENT FINANCIAL ADVISER

- 4.1 There are three broad matters that members need to consider and take account of in forming a view whether to support the recommendations set out in this report:

- 4.1.1 first, does the Council need to do anything at all in response to a request from the Chief Officers to bring about the termination of their employment on 31 March 2023?
- 4.1.2 second, as mentioned below, is this an appropriate exercise of the Council's powers (including being satisfied that overall purpose and the benefit of the proposed settlement arrangements are broadly commensurate/ proportionate with the cost);
- 4.1.3 third, if payments are put forward, are there sufficient funds within the Council's budget and/or reserves to make them without impacting services?

4.2 In considering the first matter (does the Council need to do anything at all?):

- 4.2.1 All the Chief Officers are covered by the TUPE legislation and therefore can transfer to the new Council on 1 April 2023 on their current terms and conditions that include redundancy multipliers and pension strain arrangements;
- 4.2.2 There is no request from NYC to dispense with the services of these officers as there was for the Chief Executive Officer, to the contrary NYCC asserts that it wishes all such staff to transfer under TUPE and that there will be employment of some description. Should any Chief Officer wish not to transfer then they can opt not to and could then trigger their pension (reduced due to being taken early) or seek a new role in another organisation, at no additional cost to Hambleton District Council;
- 4.2.3 If any Chief Officer feels that the post for which they are being ring-fenced is not a suitable alternative to their current role, then they are at liberty to challenge that and any consequences thereof pre or post transfer through their own legal advice and at their own expense.

4.3 In regard of the second matter (benefit commensurate with cost):

- i. If any Chief Officer did transfer to the new authority and was then later made redundant due to lack of suitable alternative employment the costs totalling £770,000 referred to in this report would be a cost to the public purse anyway. Indeed the costs incurred could be up to £1.1m if the terms of the Restructuring and Redundancy Policy were applied.
- ii. The Chief Officers have a six-month notice period and they have already proven their commitment over many years to HDC. Leaving without giving six months' notice is a breach of contract.
- iii. 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 any Chief Officer, then he may transfer to the NYC on existing terms and conditions or he may seek an alternative exit route at no additional cost to Hambleton District Council.
- iv. There is a Performance Related Pay (PRP) scheme in place, which provides for a payment of up to 20% of salary for the Chief Officers 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 as well as performance incentive.

- v. To give some context and comparison, the maximum statutory compensation for an unfair dismissal is currently capped at £93,878 or a year's pay, whichever is lower. Compensation at this level is more likely in cases where an employer has been found to have ignored policy and process in the treatment/dismissal of members of staff or where an employee was highly paid.
- vi. The potential negative reputational impact on the Council of apparently large sums being paid to individuals upon leaving the Council.
- vii. Whether the additional costs of a settlement package bring commensurate additional certainty of outcome for the Council or its successor.

4.4 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, taking account of the Principles of Managing Public Money (HM Treasury, March 2022) before coming to a conclusion. Those principles include honesty, impartiality, openness, accountability, fairness, integrity, transparency and objectivity carried out in the spirit as well as the letter of the law, in the public interest, to high ethical standards, achieving value for money.

4.5 The third matter is funding the proposed settlement agreements.

4.6 The anticipated aggregate cost of the settlements for the remaining Chief Officers is £767,065 which is made up of actuarial strain payments £462,985 and a sum in compensation for loss of office of £280,000 and Employer National Insurance contributions of £24,080.

4.7 The first source of funding for the measures proposed is the Local Government Reorganisation Reserve (LGRR), which currently has a balance of £172,140 after allowing for existing commitments. If no further sums are added to the LGRR, for example from staff budget underspends, then it will be insufficient to meet the costs of the proposed settlement arrangements for the remaining Chief Officers. It will therefore be necessary to draw upon the General Reserve in the sum of £594,925 which currently has a balance of £9.3m.

4.8 Other LGR commitments known at this time are backfill for staff being involved 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.

4.9 Therefore, it can be concluded that there are sufficient funds available to implement these measures and make the payments required in the current financial year whilst 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.

5.0 COMMENTS OF INDEPENDENT LEGAL ADVISOR

5.1 The Council must be satisfied in any decision to approve 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. This is a matter for the Council's decision, acting lawfully and reasonably.

- 5.2 The grounds on which the Council is being asked to make a decision are set out elsewhere in this report as are the objectives and safeguards sought by the Council in so doing. These appear to be relevant considerations arising from circumstances of LGR which have been described and which ought properly to be considered by the Council in discharge of its functions through to the period concluding with its abolition.
- 5.3 As a general statement, 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.
- 5.4 The Council must have due regard to statutory guidance – this includes Staff Guidance associated with LGR which itself encourages Councils to consider appropriate use of measures under the Compensation Regulations to manage staff issues and to facilitate LGR.
- 5.5 Council has power acting reasonably with due consideration to its various obligations including to taxpayers, service recipients as well as employees to enter into a mutual settlement agreement with each of the Chief Officers. The powers which may be relied upon for this purpose include:
- 5.5.1 Section 112 Local Government Act 1972 which provides the power to appoint and by necessary implication the power to terminate the employment of staff on such reasonable terms and conditions as to remuneration as the authority appointing them thinks fit.
- 5.5.2 Section 1 Localism Act which gives a local authority power to do anything an individual could. To the extent therefore that a private employer might enter into such an agreement, the Council has power to do so. This is limited to the extent of any prohibition/limitation under the law. The relevant example here of limitation would be the extent of compensation payment comply 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 or by mutual agreement. Such payments must not exceed in total 104 weeks' pay including any redundancy payment and enhanced redundancy payment under the Compensation Regulations.
- 5.5.3 Regulation 6 of the Compensation Regulations gives power to pay discretionary compensation to a person as provided for in Regulation 4, whose employment is terminated by reason of redundancy or in the interests of the efficiency of the delivery of the Council's functions. This would apply to a termination by mutual agreement as well as a dismissal.

- 5.5.4 It could be argued that a settlement agreement as proposed would fall within Regulation 4 (1) (ii) of the 2006 Regulations as being 'in the interests of the efficient exercise of the Council's functions' and thus trigger Regulation 6. It is intended that effecting a termination by mutual agreement may ensure the retention and continued focused service delivery from the current Chief Officer Group so as to enable the Council better to deliver its functions up to its abolition.
- 5.5.5 Although the Council will cease to exist after 31 March 2023 its functions will continue but will then have been transferred to NYC. The agreement may also remove uncertainty and distraction from NYC and also avoid higher costs if it were to make redundancy payments or if legal action were brought by any of the officers with regard to such matters. Addressing this issue now allows this Council and NYC more time and resource to focus on delivering reorganisation and the transferred functions.
- 5.5.6 The settlement agreement may also fall within Regulation 4 (1) (i) as being 'by reason of redundancy' and also trigger Regulation 6. The fact that the Council ceases to exist post 31st march 2023 and that across North Yorkshire the need for Chief Officers for the relevant functions will diminish compared to the overall number of such chief officers across all 8 Councils would fall within the concept of redundancy and it currently seems unlikely that any suitable chief officer role or other suitable alternative employment will be available to this Council's Chief Officers.
- 5.5.7 In terms of ability to draw pension, Regulation 30 of the Local Government Pension Scheme Regulations 2013 makes provision which would allow and or require officers of their age to draw pension in these circumstances. Under paragraph 7, where a termination is by mutual consent in the interests of business efficiency the officer is entitled and required to take their pension. The pension will not be reduced (by reason of being taken prior to retirement age) and the employing Council is required to pay to the relevant Pension Fund the actuarially assessed strain on the Pension Fund. This will apply to a dismissal by way of redundancy but not to a voluntary termination for redundancy. However, paragraph 5 of Regulation 30 would allow an officer of their age to take their pension either on leaving for redundancy or any other reason not covered by paragraph 7. Where that occurs, paragraph 8 of Regulation 30 would enable the Council as employing authority to waive in whole or in part any reduction and consequently pay pension strain arising from the early retirement.
- 5.6 The Council's policies on compensation include the Council's Restructure and Redundancy Policy (Redundancy Policy), its Retirement Policy and Procedure (Retirement Policy)– the actions proposed sit within these policies save that the policy with regard to waiver of actuarial reduction under the LGPS Employer Discretion Policy approved in 2019 is not to grant but the exercise of a discretion to do so is delegated to the Chief Executive and may be exercised in exceptional circumstances – in this instance the circumstances arising as a result of LGR and as described in this report.
- 5.7 The Retirement Policy is not relevant in this case.

- 5.8 The Council is entitled to consider the basis of compensation in these circumstances, where the employment of an officer is to be terminated by reason of the interests of efficiency, as being based on the formula for redundancy. 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. The Redundancy Policy provides for compensation under Regulation 6 of the Compensation Regulations. Redundancy payments are capped at 104 weeks' pay. We are advised that the negotiated basis of settlement agreement financial measures is that none of the four officers will pursue entitlement to the sum available for compensation under the policy which will be limited to the sum of £70,000 each and that they will waive any such entitlement as part of the settlement terms.
- 5.9 The Council is 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."*
- 5.10 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".
- 5.11 The Council's current PPS (which has been amended to provide for current circumstances arising under LGR) states that payments on ceasing to hold office will be made in accordance with the Redundancy Policy.
- 5.12 The Council should assume that approval of any settlement proposal and its implementation would attract scrutiny because these represent substantial sums. However, the details of such matters are normally confidential in accordance with the terms of a Settlement Agreement although overall cost impacts should be transparent.
- 5.13 The Monitoring Officer has been consulted in connection with this report and is satisfied that relevant legal and procedural matters have been addressed.

6.0 EQUALITY/DIVERSITY ISSUES

- 6.1 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.

7.0 HEALTH AND SAFETY ISSUES

- 7.1 Local Government reorganisation brings 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.

8.0 RECOMMENDATIONS

8.1 That Cabinet:

- 8.1.1 approves that the Council enters into a Settlement Agreement with each Chief Officers who does not wish to TUPE transfer to the North Yorkshire Council on the proposed financial terms as set out in this report and further detailed in the Confidential Annex based on the grounds and circumstances described in this report in order to assure efficient delivery of Council functions to 31st March 2023 including support to transitional arrangements in creating North Yorkshire Council and to exercise its discretion as employer pursuant to the LGPS Discretions Policy to waive under Regulation 30 (8) of the Local Government Pension Regulations 2013 any reduction in pension which might arise on the basis of exceptional circumstance as described in the report.
- 8.1.2 approves that Council delegates power to the Chief Executive in consultation with the Leader to approve any subsidiary matters necessary to finalise any Agreement provided such matters do not contravene any of the matters set out in this report;
- 8.1.3 approves that Council funds any payments under the Agreements in the current financial year from the balance of funds in the LGGR with a top up from the Council's General Fund Reserve as detailed in this report.

Councillor M S Robson
Leader of the Council

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

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