
REPORT TO:	Chief Officer Employment Committee Council
DATE:	7 December 2022 14 December 2022
SERVICE AREA:	Legal & Governance
REPORTING OFFICER:	Head of Legal & Governance (<i>Jennifer Norton</i>)
SUBJECT:	Local Government Reform North Yorkshire – Head of Paid Service
WARD/S AFFECTED:	ALL DISTRICT
FORWARD PLAN REF:	N/A

1.0 PURPOSE OF REPORT

1.1 To seek approval to enter into a redundancy settlement agreement with Wallace Sampson, the Council’s Head of Paid Service and Chief Executive Officer (“HoPS”) in the context of Harrogate Borough Council being dissolved as a result of local government re-organisation and the post of the Council’s HoPS ceasing to exist as of 1 April 2023.

2.0 RECOMMENDATIONS

2.1 That the Chief Officer Employment Committee recommend to full Council the proposed settlement terms set out at paragraph 5.8 of this report for approval and in doing so that the Chief Officer Employment Committee and Council note the business case at Appendix 1.

2.2 That Council delegate authority to the Head of Legal and Governance to enter into a settlement agreement on these terms with the HoPS/Chief Executive.

2.3 That the proposed settlement payments be funded from the Corporate Projects reserve.

2.4 That the Chief Officer Employment Committee and Council note that the proposed payments are only those to which the HoPS/Chief Executive is legally entitled and that the business case has been prepared for transparency reasons and the statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England (“SSP”) has been considered.

- 2.5 That the Chief Officer Employment Committee and Council note that a copy of the business case at Appendix 1 has been provided to the Council's external auditors and North Yorkshire County Council in advance of this report being published.
- 2.6 That should Council be minded to approve the proposed settlement then members note that North Yorkshire County Council's consent can be sought to the payment through the section 24 process.

3.0 RECOMMENDED REASONS FOR DECISIONS

- 3.1 The Local Government Restructuring – Guidance on Staffing Issues dated June 2008 (“Staffing Guidance”) explains that the Council is entitled to offer voluntary early redundancy to employees who wish to terminate their employment and receive a financial severance package resulting in the contract being terminated by mutual agreement. This has happened in a number of other areas subject to reorganisation.
- 3.2 More specifically the Staffing Guidance states, “*Any chief executive of a predecessor council for whom there was no suitable alternative post on transfer is likely to be made redundant. There is, however, nothing to prevent a chief executive (or other senior officer) of a predecessor council from reaching agreement with their existing employers on terms of severance, if they wish to leave before the reorganisation date, though we would expect the agreement of the Implementation Executive or Shadow Council to be obtained, perhaps within the context of a local protocol on staffing issues.*”
- 3.3 The proposed settlement is considered to represent value for money by ensuring that the HoPS/Chief Executive remains in office and engaged to enable the Council to continue to deliver its services until 31 March 2023; that there is a smooth transition to the new authority; and contractual and statutory payments to the HoPS/Chief Executive are paid to him as a result of the termination of his employment on the grounds of redundancy.
- 3.4 Whilst the proposals do not encompass payments other than those to which the HoPS/Chief Executive has a legal entitlement (i.e. contractual and statutory rights to such payments), the HoPS/Chief Executive has no contractual entitlement to be paid in lieu of notice. However, he is contractually entitled to be paid for his notice period, but as explained later in this report there is no role for him to work through his notice period. In the interests of good governance and transparency, the proposed payment to the HoPS/Chief Executive of his notice has therefore been assessed against the considerations for making SSPs as contained in the government guidance referred to earlier and the response is set out in the appended business case.
- 3.5 Whilst section 24 approval may not be required, officers are of the view that the County Council should be involved in the process not least in the interests of transparency, good governance and in recognition of the fact that ultimately all District and Borough Council assets and funds are publicly owned and will transfer to the County as the continuing authority.

4.0 ALTERNATIVE OPTIONS CONSIDERED AND RECOMMENDED FOR REJECTION

4.1 North Yorkshire County Council is the continuing authority and its position is that the office holder for HoPS will not transfer to the new authority on 1 April 2023. As such the new authority are likely to refuse to recognise him as an employee on 1 April 2023 leaving him, as an employee (as Chief Executive) effectively stranded. This approach does not recognise that the office holder is also an employee with rights to transfer. The legal advice that the Council has received is that this will inevitably lead to an automatically unfair dismissal claim causing unnecessary conflict, impact on senior officer time and a waste of public funds as explained in the appended business case.

4.2 If North Yorkshire County Council were to change its view and the post holder transferred to the new authority on 1 April 2023, it will have no suitable alternative role, and the new authority as the employer will be able to terminate his employment lawfully on the grounds of redundancy. The new authority will then have three options being: (1) to employ him during the contractual period of notice (which will be difficult as there is no suitable role for him to undertake); (2) put him on garden leave during all or part of his notice; or (3) make a payment in lieu of contractual notice. The result is therefore likely to be financially the same as that proposed by this report (with the difference being that the dismissal for reason of redundancy would take place a few weeks after 1 April 2023 and be by the new employer being the North Yorkshire Council). In short, the proposal in the report recognises this and is a practical and pragmatic solution.

5.0 THE REPORT

Background

5.1 The North Yorkshire (Structural Changes) Order 2022 (“SCO”) provides for the establishment, on 1 April 2023, of a single tier of local government in the county of North Yorkshire. The existing seven district areas within North Yorkshire are to be abolished as local government areas and replaced by a single district area coterminous with the county. All seven district councils in North Yorkshire (Craven, Hambleton, Harrogate, Richmondshire, Ryedale, Scarborough and Selby) are therefore to be wound up and dissolved. From 1 April 2023 North Yorkshire will be administered by a single county council, the North Yorkshire Council.

5.2 As the Council remains the sovereign authority responsible for delivery of its existing statutory and discretionary services up until and including 31 March 2023, there is no diminished or ceasing requirement for the HoPS to perform his role. It is therefore not envisaged that a redundancy situation will arise before 31 March 2023.

5.3 Whether a post is or should be declared redundant is a matter for the relevant employer to seek to agree or implement. Dismissals of the HoPS for redundancy are specifically a matter for full Council to determine.

5.4 There is a difference in legal view as to the interpretation of The Local Government (Structural and Boundary Changes) (Staffing) Regulations 2008. The County Council’s view is that the correct interpretation of these regulations is that the HoPS is in a unique position and does not TUPE

transfer under TUPE. However, the Council together with the other District Councils has received external legal advice that the individual office holder of the HoPS role is also an employee (employed as the Chief Executive) and it is their employment that does TUPE transfer under TUPE. The detail of that advice and the implications of the application of TUPE on the ability of an employer to lawfully and fairly dismiss an employee are set out in the attached business case. On either interpretation, there is by reason of local government reorganisation a 'redundancy' situation which will need to be funded by the public purse. The difference is whether the Council as existing employer meets that liability or the North Yorkshire Council as the new authority does a few weeks later. The liability and sums involved are the same (perhaps slightly more if North Yorkshire Council conduct the redundancy dismissal procedure).

- 5.5 Officers are aware that there have been Reports in the Public Interest (RPI) under section 24 and Schedule 7 of the Local Audit and Accountability Act 2014 on payments made by other councils which have raised concerns about the regularity and propriety of severance payments made in connection with the termination of the Chief Executive's employment. The proposals put forward in this report have been subject to external and independent legal advice and a copy of the business case has been shared with the Council's external auditors.
- 5.6 The Council should note that the legal advice is that the Chief Executive will as a matter of law TUPE transfer to the North Yorkshire Council on 1 April 2023. As such it would be for the North Yorkshire Council to make the Chief Executive redundant. The settlement proposal clearly recognises the legal dispute and the practical challenges that flow in maintaining this position and essentially leaving it the Chief Executive to argue his case with North Yorkshire Council on 1 April 2023. Council is therefore being asked to agree to the redundancy payment and accept the liability that comes with that. Acting in this way accords with the pragmatism set out in the government guidance referred to above and addresses the uncertainty created by the difference in legal views as to the correct interpretation of the Staffing Regulations and the risk of costly legal proceedings (that will be picked up by the public purse).
- 5.7 Although the Chief Executive is entitled to be paid for his notice period, the Council should note that there is not provision in the Chief Executive's employment contract for him to be paid in lieu of notice. However, in the circumstances there is no reasonably practicable alternative as there is no role for him to perform after 31 March 2023.
- 5.8 On that basis it is therefore proposed that agreement be reached with the HoPS/Chief Executive on the following terms
- (1) The HoPS/Chief Executive object to any TUPE transfer to the new authority therefore removing the risk of the employee transferring "as a matter of law" to the new authority;
 - (2) Notice to terminate by reason of redundancy be given on 31 March 2023;
 - (3) The HoPS/Chief Executive be paid £29,641.56 in respect of his contractual notice period of 12 weeks but that this payment be paid in

lieu of notice, there being no role for him to serve his notice out after 31 March 2023

- (4) The HoPS/Chief Executive be paid his contractual redundancy payment of £71,633.77
- (5) The HoPS/Chief Executive ensure that he has no accrued but untaken holiday (or at least he has made every attempt to take reasonable leave before 31 March 2023.) In the event that work commitments mean that it is not reasonably possible for all leave to be taken that payment be made in lieu of the accrued untaken holiday leave with the agreement of the Head of Legal & Governance, in consultation with the Leader and s151 Officer.

Finally, that any payments received are in full and final settlement of any employment related claim that as an employee he may have.

6.0 REQUIRED ASSESSMENTS AND IMPLICATIONS

- 6.1 The following were considered: Financial Implications; Human Resources Implications; Legal Implications; ICT Implications; Strategic Property/Asset Management Considerations; Risk Assessment; Equality and Diversity (the Public Sector Equality Duty and impact upon people with protected characteristics). If applicable, the outcomes of any consultations, assessments, considerations and implications considered necessary during preparation of this report are detailed below.
- 6.2 The legal advice is as set out in this report and the appended business case.
- 6.3 The two amounts outlined in paragraph 5.8 above, totalling £101,275.33, (plus any sum in respect of any agreed accrued untaken leave) can be funded from the Corporate Projects Reserve.

Background Papers – The Local Government (Structural and Boundary Changes) (Staffing) Regulations 2008 (“Staffing Regulations”)

Local Government Restructuring – Guidance on Staffing Issues dated June 2008 (“Staffing Guidance”)

OFFICER CONTACT: Please contact Jennifer Norton, Head of Legal & Governance if you require any further information on the contents of this report. The officer can be contacted at the Civic Centre, PO Bo 787, Harrogate, HG1 9RW, telephone 01423 500600 or by e-mail jennifer.norton@harrogate.gov.uk