



Council

6 December 2022

Local Government Reorganisation North Yorkshire – Head of Paid Service

Report of The Monitoring Officer

**All Wards
Key Decision = N/A**

1.0 Purpose of Report

- 1.1 To seek Member approval to enter into a redundancy settlement agreement with Anthony Clark, the Council's Head of Paid Service and Chief Executive Officer ("HoPS") in the context of Richmondshire District 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 Decisions Sought

- 2.1 For Members to decide if they wish to enter into a redundancy settlement agreement with the Council's Chief Executive and Head of Paid Service.

3.0 Link to Corporate Priorities

- 3.1 This report links to the corporate priority of a Fit for Purpose Council

4.0 Background

- 4.1 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 council, the North Yorkshire Council.
- 4.2 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.
- 4.3 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.

- 4.4 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 days / weeks later. The liability and sums involved are the same (perhaps slightly more if North Yorkshire Council conduct the redundancy dismissal procedure).
- 4.5 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.
- 4.6 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 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).
- 4.7 The Council should also note that there is no 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.
- 4.8 On that basis it is therefore proposed that agreement be reached with the HoPS on the following terms
- (1) The HoPS 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 be paid £ 24,606.60 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 be paid his contractual redundancy payment of £61,516.50.
- (5) The HoPS will be paid the full pension that he is entitled to. This includes a pension strain cost to the pension fund of £30,135.97 which will be reimbursed by the Council. It is recommended that this sum is made as one payment as opposed to paying over 3 or 5 years as the deferred options result in a higher total figure being paid.
- (6) The HoPS will 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.
- (7) That any payments received are in full and final settlement of any employment related claim that as an employee he may have.

5.0 Recommended Reasons for the Decision

- 5.1 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.
- 5.2 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.”*
- 5.3 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.
- 5.4 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. 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 ‘Special Severance Payments’ as contained in the government guidance referred to earlier and the response is set out in the appended business case.

5.5 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.

6.0 Alternative Options Considered and Recommended for Rejection

6.1 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, senior officer time and a waste of public funds as explained in the appended business case.

6.2 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 set out in 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.

7.0 Recommendations

7.1 That Council agree the proposed settlement terms set out at paragraph 4.8 of this report for approval and in doing so that Council note the business case at Appendix 1.

7.2 That Council delegate authority to the Monitoring Officer to enter into a settlement agreement on these terms with the HoPS/Chief Executive.

7.3 That Council delegate authority to the Monitoring Officer to amend the redundancy and payment in lieu of notice figures in the settlement agreement, in consultation with the Leader and s151 Officer, to correct any errors to a maximum of 10%.

7.4 That the proposed settlement payments of £116,259.07 be funded from the £350,000 monies set aside for additional LGR costs as part of the 2022/23 budget.

7.5 That 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.

- 7.6 That 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.
- 7.7 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.

8.0 Corporate Implications

Scrutiny Consultation	None undertaken
Community Engagement	This is an employment matter and not appropriate for community engagement
Environment & Sustainability & Climate Change	The proposal has been discussed with the Climate Change Officer and there are no specific issues arising from this report
Financial Implications	The sum of up to £116,259.07 to be allocated from the £350,000 additional costs part of the 2022/23 budget setting process.
Legal Implications	As set out in the report
Risk Implications	As set out in the report failure to address the employment position of the Head of Paid Service may lead to a legal dispute with the new North Yorkshire Council which would have major reputational impact upon this Council in the lead up to the LGR Vesting Date.
Human Resource Implications	As set out in the report
Equalities Implications	None arising from this report and following analysis no full EIA is required relating to this decision.
Health & Safety Implications	None arising from this report

9.0 Further Information

- 9.1 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”)
- 9.2 File Reference – None.
- 9.3 Appendices – Appendix 1 - Draft Business Case

Contact Officer: Callum McKeon

Email / Extension: Callum.McKeon@richmonshire.gov.uk
Ext. 44003