

North Yorkshire Council

Executive

2nd May 2023

Implications of TUPE

Report of the Assistant Chief Executive (HR and Business Support)

1.0 PURPOSE OF REPORT

- 1.1 To provide an update on the implementation of the management structure for the new council and the cost implications in relation to TUPE, for consideration and approval to submit to full council.

2.0 BACKGROUND

- 2.1 The management structure for NYC has now been established and implemented at tiers 1 (Chief Executive), 2 (Management Board), and three (Assistant Directors). All district and borough staff, apart from the Chief Executives, transferred under TUPE (Transfer of Undertakings Protection of Employees), on 1st April. There are some outstanding issues to be resolved in relation to a small number of senior managers, from previous Districts and Boroughs, not appointed to the new structure.

3.0 OUTSTANDING STAFFING ISSUES RESULTING FROM TUPE

- 3.1 TUPE protects district and borough staff transferring to NYC in relation to their pay, terms and conditions, role, and working arrangements. For NYC this means all such staff have moved to NYC with the same pay, terms and conditions and working arrangements as they had with their previous district or borough council employer. The senior managers appointed to posts in NYC's new management structure have accepted a new role for NYC as of 1st April, with NYC pay, terms and conditions and working arrangements. For the remaining district and borough senior managers, discussions have been undertaken to allocate substitute duties where their previous duties no longer exist having been subsumed by the new Assistant Director roles. The legal position is that under TUPE it is acceptable to provide substitute duties in such situations, but these duties must be in line with the job description, status and working arrangements of the role the member of staff has transferred on, and if this is not possible then the individual is in a redundancy position.

The new council committed to ensure as far as possible that there are roles or duties for all district and borough colleagues transferring to the new council and have done this for senior managers and will adopt the same approach for future restructures.

The new NYC management structure obviously has significantly fewer posts than the total for the previous eight councils, 60 compared to 36, resulting in some managers moving over under TUPE without a role in the new structure. A number left prior to vesting day, in the main having secured another role elsewhere, some planned to retire just before or shortly after vesting day, and two are undertaking duties covering valuable work for the new council which will take them up to their planned retirement, one having reduced their hours to work part time until then. These duties make full use of their significant skills and experience to the

benefit of the council and cover work areas that would otherwise require additional resource in terms of appointments, interim managers, or consultants.

There are three senior managers where the substitute duties allocated are time limited, and on conclusion they will be in a redundancy position. Legal advice has been sought and confirms this position. The costs and timescale for this are detailed in the appendix alongside current and ongoing employment costs. Whilst there is an exit cost, the time frame for continued employment until the substitute work concludes, results in a reduced cost due to the reduction in pension strain in one case, but to extend further beyond the time frame would significantly increase the cost as pension strain would then be relevant in another case.

In addition, the duties covered would otherwise require appointment or temporary engagement of interim or consultant resources, and so retention of these managers is a much more cost-effective way of covering the work for the time period needed. The financial outcome is a future saving relative to the current and ongoing salary and employment costs, and this saving has been accounted for in the approx. £3.8m saving (including on costs) on senior management costs for NYC for tiers 1 to 3.

Full council approval is needed for these exit costs detailed in the appendix.

To be in a position with only 3 senior managers in this situation is a good outcome and is the result of ongoing work and engagement with all senior managers affected.

The next stage of restructuring is at tier 4, Head of Service level, and it is possible that there will be further costs at this level due to a reduction of posts needed.

4.0 CONSULTATION UNDERTAKEN AND RESPONSES

4.1 Consultation, in accordance with legal requirements, has been undertaken with the individuals affected and the overall position was covered by TUPE consultation prior to vesting day.

5.0 ALTERNATIVE OPTIONS CONSIDERED

5.1 The alternative option is to provide other duties at a senior level on conclusion of the current allocation which is time limited. It is unlikely there will be alternative senior duties available beyond the current two-year time frame, as by then the transformation work post LGR, and changes required to deliver savings, will in the main be concluded and the established substantive management structure at Assistant Director level will be sufficient to deliver ongoing work at a senior level without additional resources.

6.0 FINANCIAL IMPLICATIONS

6.1 The total exit costs are estimated at £513.7k. Some of this cost is the result of TUPE protection of terms and conditions including redundancy entitlement, as one of the relevant districts had an enhanced redundancy scheme. These are estimates because the amounts will be slightly increased by the annual pay awards which are not yet known, and for the one case where pension strain is included it is not possible to be precise on the figure some 2 years in advance. The salary savings are £332.7k (including oncosts) per annum, which is a payback period of around 18 months.

7.0 LEGAL IMPLICATIONS

7.1 Legal advice has been sought and these proposals are in accordance with that advice. Redundancy can still arise even if the senior employee at risk could undertake other purposeful work for the new council, assuming that work is distinct from what they currently

perform. Whilst it is feasible that any such other work is suitable alternative employment and puts the employee at risk of losing their statutory redundancy payment if the offer is unreasonably refused, they would still be redundant for the purpose of pension regulations which is where most of the exit costs sit.

8.0 EQUALITIES IMPLICATIONS

8.1 The situation has occurred as a result of TUPE, which applied to all district and borough staff equally and in the same way.

9.0 CLIMATE CHANGE IMPLICATIONS

9.1 There are no implications.

10.0 PERFORMANCE IMPLICATIONS

10.1 The retention, post TUPE, of this small cohort of senior managers for a defined period of time, enables key areas of work to be concluded at a quicker pace and in a cost-effective way.

11.0 HUMAN RESOURCES IMPLICATIONS

11.1 The retention enables the council to have access to, and use, the skills and experience of previous district and borough senior managers for a longer period of time to the benefit of the council

12.0 REASONS FOR RECOMMENDATIONS

12.1 To address the outstanding issues resulting from TUPE in relation to senior managers and the appointment to the new management structure.

13.0 RECOMMENDATION(S)

- i) to approve the estimated costs outlined in Appendix 1
- ii) to approve the submission of the estimated costs to full council

APPENDICES:

Appendix A – Schedule of timeframe and costs

The Appendix to this report contains exempt information of the description contained in paragraph 2 (Information that is likely to reveal the identity of an individual), paragraph 3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) and paragraph 4 (Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority) of Part 1 of Schedule 12a of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) Order 2006.

Trudy Forster
Assistant Chief Executive (HR and Business Support)
County Hall
Northallerton
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Report Author – *Justine Brooksbank, previous Assistant Chief Executive (HR and Business Support)*
Presenter of Report – *Trudy Forster, Assistant Chief Executive (HR and Business Support)*

Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.

PLEASE ALSO NOTE THAT IF ANY REPORTS / APPENDICES INCLUDE SIGNATURES THESE MUST BE REMOVED / DELETED PRIOR TO SENDING REPORTS / APPENDICES TO DEMOCRATIC SERVICES. Appendices should include an Equality Impact Assessment and a Climate Impact Assessment where appropriate