



**REPORT TO:** COUNCIL

**DATE:** 1 DECEMBER 2022

**REPORT OF THE:** HEAD OF CORPORATE GOVERNANCE AND MONITORING OFFICER  
ELIZABETH HEATH

**TITLE OF REPORT:** LOCAL GOVERNMENT REORGANISATION – HEAD OF PAID SERVICE AND CHIEF EXECUTIVE

**WARDS AFFECTED:** ALL

---

## **EXECUTIVE SUMMARY**

### **1.0 PURPOSE OF REPORT**

To seek approval to enter into a redundancy Settlement Agreement with Stacey Burlet, the Council's Head of Paid Service and Chief Executive ("HoPS") in the context of Ryedale 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 RECOMMENDATION**

It is recommended that:

- 2.1 the proposed settlement terms set out at paragraph 3.14 of this report are approved
- 2.2 delegated authority is granted to the Solicitor to the Council (Monitoring Officer) to enter into a Settlement Agreement on these terms with the HoPS/Chief Executive
- 2.3 delegated authority is granted to the Solicitor to the Council (Monitoring Officer) to amend the redundancy and payment in lieu of notice figures in the Settlement Agreement, in consultation with the Chair of the Policy & Resources Committee and s151 Officer, to correct any errors to a maximum of 10%

In reaching the recommendation, Council is asked to note

- 2.4 the analysis at Appendix A
- 2.5 the proposed payments are only those to which the HoPS/ Chief Executive is legally entitled and that the analysis (called the business case in the Council's policy) 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.

### **3.0 REASON FOR RECOMMENDATIONS**

- 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 her as result of the termination of her 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. The HoPS/Chief Executive is however entitled to be paid notice and in the circumstances there is no reasonably practicable alternative as there is no role for her to perform after 31 March 2023. In the interests of good governance and transparency, the proposed payment to the HoPS/ Chief Executive of her notice has been assessed against the considerations for making SSPs as contained in the government guidance referred to earlier and the response to each one 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 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.
- 3.6 The following alternative proposals have been considered in writing in this report:
  - a. North Yorkshire County Council is the continuing authority and its position is that the officer holder for HoPS will not transfer to the new authority on 1 April 2023. As such the new authority is likely to refuse to recognise her as an employee on 1 April 2023, leaving her, as an employee (as Chief Executive) effectively stranded. This approach does not recognise that the officer 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.
  - b. 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 her employment lawfully on the grounds of redundancy. The new authority will then have three options being: (1) to employ her during the contractual period of notice (which will be difficult as there is no suitable role for her to undertake); (2) put her on garden leave during all or part of her 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 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.
- 3.7 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.

- 3.8 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 her role. It is therefore not envisaged that a redundancy situation will arise before 31 March 2023.
- 3.9 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 is a matter for Council to determine.
- 3.10 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 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 Chief Executive) and it is their employment that does 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).
- 3.11 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.
- 3.12 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. It would then 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 her 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).
- 3.13 There is no contractual right in the Chief Executive's employment contract for payment in lieu of notice. However, in the circumstances there is no reasonably practicable alternative as there is no role for her to perform after 31 March 2023.
- 3.14 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 £56,758.56 subject to tax and national insurance deductions in respect of her contractual notice period of 6 months but that this payment be paid in lieu of notice, there being no role for her to serve her notice out after 31 March 2023;
- (4) The HoPS be paid her contractual redundancy payment of £15,240.12;
- (5) The HoPS ensure that she has no accrued but untaken holiday or at least she has made every attempt to take reasonable leave before 31 March 2023;
- (6) That any payments received are in full and final settlement of any employment related claim that as an employee she may have.

#### **4.0 FINANCIAL AND VALUE FOR MONEY IMPLICATIONS**

- 4.1 The Financial and Value for money implications are clearly set out in the report and business case.

#### **5.0 LEGAL IMPLICATIONS**

- 5.1 These are set out in the body of the report.

#### **6.0 CONSULTATIONS WITH OTHERS**

- 6.1 Head of HR  
S151 Officer  
External Audit

#### **7.0 BACKGROUND DOCUMENTS**

- 7.1 JNC Local Authority Chief Executives Conditions of Service Handbook (as updated on 13th October 2016).

Local Government Restructuring – Guidance on Staffing Issues dated June 2008  
Staffing Guidance

Redeployment and Redundancy Policy and Procedure (Ryedale District Council 2012)

#### **8.0 APPENDICES**

- Appendix A – analysis

#### **9.0 AUTHOR OF THE REPORT**

**Elizabeth Heath, Head of Corporate Governance and Monitoring Officer.**

Telephone No: 07952 908229  
E-Mail Address: [elizabeth.heath@ryedale.gov.uk](mailto:elizabeth.heath@ryedale.gov.uk)