

Minutes

Employment Committee

Venue:	Council Chamber - Civic Centre, Doncaster Road, Selby, YO8 9FT
Date:	Thursday, 24 November 2022
Time:	2.00 pm
Present:	Councillors M Crane, R Packham and C Pearson
Officers present:	Suzan Harrington – Director of Corporate Services and Commissioning, Glenn Sharpe – Solicitor and Deputy Monitoring Officer; and Dawn Drury – Democratic Services Officer

1 ELECTION OF CHAIR

It was proposed, and seconded, that Councillor Mark Crane be elected as Chair for this meeting.

RESOLVED:

To appoint Councillor Mark Crane as Chair for this meeting.

2 APOLOGIES FOR ABSENCE

Apologies for absence had been received from Councillor R Musgrave.

3 DISCLOSURES OF INTEREST

There were no disclosures of interest.

4 PROPOSED REDUNDANCY SETTLEMENT AGREEMENT: COUNCIL'S HEAD OF PAID SERVICE AND CHIEF EXECUTIVE OFFICER ("HOPS") (EC/22/1)

The Committee considered report EC/22/1 which sought approval to enter into a redundancy settlement agreement with Janet Waggott, the Council's Head of Paid Service and Chief Executive Officer ("HoPS") in the context of Selby District Council (SDC) being abolished as a result of

Local Government Re-organisation (LGR) and the post of HoPS ceasing to exist as of 1 April 2023. The Committee further considered a recommendation that the Council delegate authority to the Deputy Monitoring Officer to arrange for the Council to enter into a settlement agreement with the HoPS and North Yorkshire County Council on the terms set out in paragraph 6.5 of the report.

The Deputy Monitoring Officer explained that any recommendations made by the Committee were part of a three-stage process and would, in the first instance, be subject to a review by one of the Council's Independent Persons. Following that review a further report would then be presented to full Council on the 13 December; finally, Council would be invited to endorse and approve said recommendations.

Members heard that as a result of the North Yorkshire (Structural Changes) Order 2022 ("SCO"), the existing seven district areas within North Yorkshire were to be abolished as local government areas, therefore from 1 April 2023 North Yorkshire would be administered by one single unitary council, the North Yorkshire Council (NYC).

It was confirmed that the SCO was being implemented in accordance with the Local Government and Public Involvement in Health Act 2007 (the "2007 Act") and the guidance and regulations contained therein applied; to include The Employment Rights Act 1996 ("ERA")

The Committee noted that, as set out in the ERA, redundancy arose in one of three scenarios, the scenario relevant to this matter was one of diminished requirement of the business for employees to do work of a particular kind. It was further noted that whether a post was or should be declared redundant, was a matter for SDC as the relevant employer to seek to agree or implement. Therefore, dismissal of the HoPS for redundancy was specifically a matter for full Council to determine.

In relation to the Transfer of Undertakings Regulations (TUPE), which applied to the process of LGR, the intention was that staff who were subject to public sector transfers did so on terms that were no less favourable than those they enjoyed immediately prior to the transfer. Therefore, the HoPS of predecessor councils would in principle be subject to the application of TUPE and entitled to transfer to NYC on their existing terms and condition.

It was brought to Members attention that there had been a significant difference of opinion between North Yorkshire County Council (NYCC) and the seven district Councils regarding the application of TUPE, with NYCC being of the opinion that TUPE did not apply to HoPS in this instance. The seven district Councils and their Monitoring Officers, advised by specialist employment lawyers, disagreed with this assessment. NYCC had recently altered its position somewhat but continued to maintain that the law was vague in this area.

The Deputy Monitoring Officer stated that in his opinion, as Solicitor to the
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Committee and after consultation with employment specialists and colleagues at other North Yorkshire District Councils, TUPE did apply in this case. Accordingly, unless the HoPS and SDC as current employer agreed or determined otherwise then the HoPS would be expected to transfer to NYC, in accordance with the principles of TUPE, and the statutory guidance, on 1 April 2023. NYC as the new employer would then be responsible for making and implementing any decisions as to redundancy.

The Committee noted that following a competitive recruitment process, on 17 August 2022, the shadow NYC appointed the current NYCC Chief Executive, Mr Richard Flinton, as Chief Executive for the new unitary Council as of 1 April 2023. Therefore, NYCC maintained that there would be no suitable alternative post on transfer for the HoPS; consequently, the post of the current HoPS would be redundant.

The Deputy Monitoring Officer confirmed the three options available to NYC should the HoPS take the decision to transfer through the TUPE provisions on 1 April 2023. However, Members were informed that as a consequence of the reorganisation there was one further option to explore, namely, should the HoPS wish to leave local government service, SDC could reach an agreement with the HoPS whereby their employment ended on 31 March 2023 on the grounds of redundancy, with an agreed exit package, in exchange for waiving any rights to make a claim for unfair dismissal.

It was highlighted that Ms Waggott had taken advice in terms of being made redundant by SDC and was being represented by the Association of Local Authority Chief Executive's (ALACE). It was confirmed that ALACE had been in communication with both officers of SDC and the specialist employment advisors, and subject to the detailed provisions of such an arrangement, it had been indicated that the HoPS was minded to pursue this option. This formed the basis of the recommendation set out in the report.

The officer summarised the terms of employment for the HoPS as set out in paragraph 5 of the report and explained that these formed the basis of any proposed settlement agreement. Members noted that the calculations and monetary figures cited had all been provided by the Human Resource advisors at County Hall, and the officer stated that he was satisfied that the calculations were correct.

It was explained that in terms of the Local Government Pension Scheme, a member who was over 55 years of age had an entitlement to an unreduced pension, therefore, in this case, the shortfall in pension contributions prior to the statutory age of retirement, known as the pension strain, would be met by SDC as part of the proposed Settlement Agreement. It was noted that this payment was a statutory entitlement under the regulations, and not a benefit, and had been included in the report in the interest of openness and transparency.

In terms of a proposed way forward, Members were asked to treat this as a genuine redundancy situation, which would enable SDC to consult with the HoPS as to redundancy, and to serve notice on 31 March 2023 to terminate the employment by reason of redundancy.

The Committee were assured that both statutory and staffing guidance had been taken into account: in summary the guidance confirmed that SDC were entitled to offer Voluntary Early Redundancy (VER) to employees who wished to terminate their employment and receive a financial severance package resulting in the contract being terminated by mutual agreement.

The guidance went further and suggested that NYC, as the new authority, may wish to promote such an arrangement to take effect before the 1 April 2023 to affect a smooth and efficient transition, and co-ordinate with predecessor Councils whilst acknowledging that the decision rested with the Council as the relevant employer. The Deputy Monitoring Officer confirmed that liaison, correspondence and numerous conversations had taken place between officers at SDC and NYCC to facilitate this arrangement.

The officer outlined that it was proposed that a tri-partite agreement be reached between the HoPS, SDC and NYC for the dismissal by reason of redundancy of the HoPS ahead of vesting day. Members were informed that ALACE, on behalf of Ms Waggott, had challenged the tri-partite agreement as they felt that it was purely a matter between their client and SDC as the present employer. The officer confirmed that the point had been checked with the specialist employment advisor, who had indicated that it was advisable to have a tri-partite settlement in place with NYC to settle all claims and promote certainty and security for all parties concerned.

Members noted the terms of the tri-partite agreement which were set out at paragraph 6.5 of the report.

In assessing the legal implications, the Committee heard that officers had worked closely with other local authority lawyers, and secured specialist employment advice, to seek certainty and transparency. In relation to the financial implications of the recommendation, they had been the subject of discussion and consultation with both SDC's internal auditors, the external auditor Mazars LLP, and NYCC on the basis that it provided its S151 Officer to SDC.

In relation to Section 24 approval, which had a threshold of £100.000k, it was explained that this may not be required of NYCC, however officers were of the view that NYCC 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 were publicly owned and would transfer to NYC on the 1 April 2023 as the continuing authority.

Finally, Members heard that the proposed settlement was considered to represent value for money by ensuring that the HoPS remained in office and engaged to enable SDC to continue to deliver its services until 31 March 2023; the officer stated that Ms Waggott was extremely keen to ensure that delivery of the Council's existing services continued uninterrupted up to vesting day.

The Leader of the Council opened the debate by bringing to the Committee's attention that both he and Councillor Packham, as well as being SDC Councillors, were also NYCC Councillors, however he stated that this was not a disclosure of interest.

In response to a query from the Leader regarding the disparity between the figures for the proposed redundancy payment and the payment in lieu of notice amounts, in relation to the calculations shown. The Director of Corporate Services and Commissioning explained that the calculation depended on the age of the individual and the period of service that related to that age; this was in accordance with the Council's Employment Policy.

It was confirmed that in this particular case the HoPS was over the age of 55 and therefore the accepted calculation was 20 x 1.5 weeks; the 1.5 equated to 30 times the weekly salary, rather than 20 times as quoted within the report. It was explained that the rationale behind this was to take into account the possibility of redundancy for a person of a more mature age and the likelihood of increased difficulty in securing new employment.

Officers were requested by the Leader to amend the figures to reflect the correct calculations, prior to the report being presented at full Council on the 13 December 2022.

The Leader made the comment that he had not been in favour of LGR, but that it had been central government's decision to make. It was further stated that NYCC were of the opinion that they could make savings of up to £50m per year, however it had been widely known that to achieve that amount of savings it would bring about redundancies, as the new unitary NYC would not have sufficient roles for the seven district HoPS to fill.

The Leader expressed his sadness at the demise of Selby District Council and stated that he knew that Ms Waggott was also deeply saddened that SDC would cease to exist, and disappointed that she would no longer have a role which she had always performed with dedication and professionalism.

It was commented that the redundancy figures within the report looked significant, however when the pension strain costs were removed, they were not as great as had been expected. It was further stated that the same redundancy process would be applied to any other member of staff at SDC should they be made redundant, as was being followed for the HoPS. There was no enhancement of figures, SDC were simply following

their own Human Resource employment procedures and current employment law in relation to redundancy.

The Leader stated that he was supportive of the recommendations within the report, and that he hoped that a tri-partite agreement could be reached with NYC; in discussions that had taken place between him and the Leader and Deputy Leader of NYCC, it had been indicated that in principle they were in agreement.

Councillor Packham concurred with most of the comments that had been made by Councillor Crane and commended the officer for producing a very clear, comprehensive report.

Councillor Packham queried if he was correct in thinking that the pension strain figure was the amount of monies that SDC would pay to go into the HoPS's pension pot fund to cover future pension drawings, and not an actual payment direct to the HoPS; the officer confirmed that this was correct.

Councillor Packham concluded that the redundancy figures had been calculated according to employment law, with no enhancements, and therefore he supported the recommendations.

In response to a query from Councillor Pearson in terms of the HoPS's role as Deputy Chief Executive of NYCC, where at present she was employed one day per week, and whether NYCC would be making a contribution towards any redundancy payment, the officer stated that he did not have an answer. The Leader confirmed that it had been agreed with NYCC that as the decision on redundancy was to be made by SDC as the employer, then the full payment would also be made by SDC. It was noted that ultimately all SDC's assets and funds would transfer to NYC on the 1 April 2023, as the continuing authority.

It was proposed and seconded that the Committee approved the recommendations as set out in the report; the decision was unanimous.

RESOLVED:

- 1. That the Committee's recommendations be subject to review by the Council's Independent Person prior to the presentation of a further report to full Council inviting endorsement and approval of the said recommendations.**
- 2. That the Deputy Monitoring Officer prepare a report for submission to full Council on 13 December 2022, recommending that Council approve the proposed settlement terms set out at paragraph 6.5. of the report.**
- 3. The Committee further recommends that the Council delegate authority to the Deputy Monitoring Officer**

to arrange for the Council to enter into a settlement agreement with the HoPS and North Yorkshire County Council on the terms set out in paragraph 6.5 of the report.

REASON FOR DECISION

To ensure the Council has a Chief Executive and Head of Paid Service up until and including 31 March 2023, as there is no diminished or ceasing requirement for the HoPS to perform her role on behalf of Selby District Council, to provide delivery of its existing statutory and discretionary services throughout the period. To aid a smooth transition to the new authority; and that the potential for costly and disruptive legal proceedings will be avoided by recognising now what payments the HoPS is legally entitled to as a result of their service and termination of employment.

The meeting closed at 2.45 pm.