



SPECIAL COUNCIL – 31ST OCTOBER 2017

SUBJECT: POTENTIAL SETTLEMENT AGREEMENT

REPORT BY: INTERIM CHIEF EXECUTIVE

1. PURPOSE OF REPORT

1.1 This report sets out the details of potential settlement agreements with two senior officers of the Council to terminate their employment by mutual consent. This requires the agreement of Council.

2. SUMMARY

2.1 Members will be well aware of disciplinary investigations which have been taking place regarding three senior officers of the Council. These arose from the publication of a Public Interest Report by the Wales Audit Office, followed by a police investigation and subsequent charges which were later dismissed by the Court.

2.2 Following a Preliminary Investigation, the Council's Investigating and Disciplinary Committee (IDC) determined that there were matters which ought to be referred to a Designated Independent Person for investigation, in accordance with the Local Government (Wales) Standing Orders Regulations.

2.3 Following discussion at the IDC, and in agreement with the Leader of Council, discussions have taken place with all three officers as to whether a resolution of the issues by way of a mutually agreed settlement would be possible, as an alternative to entering the full investigation stage.

2.4 This report sets out the extent of a provisional agreement which has been reached with two of the three officers for consideration by Council. The cost of these settlements is considered to be less than the estimated cost of continuing with the investigation for these two officers.

3. LINKS TO STRATEGY

3.1 This matter relates to internal matters of the council and there are no policy implications which require consideration.

4. THE REPORT

4.1 As outlined above, this report details the terms of potential settlement agreements with two officers, as an alternative to pursuing a full disciplinary investigation by a Designated Independent Person.

- 4.2 Having taken legal advice, the actual details of the proposed settlements are considered to fall within the description of exempt information in accordance with the Local Government Act 1972. For that reason they are outlined in the exempt, part 2 of this report. However, the terms of these payments, if agreed, will be required to be published in the Council's end of year accounts. For that reason, and in order to have the maximum permissible openness and transparency to this process, the terms will be published at the conclusion of this meeting, if Members approve them.
- 4.3 The exempt part of this report details the precise terms of the 'business case' in support of these settlements. The expectation is that the Designated Independent Person stage of this investigation would most likely take 12 months to complete. This would involve significant costs. The full details are contained in the second part of this report. The costs of the settlements being put before Members are such that they are expected to be less than the anticipated cost of actually proceeding with the investigation.
- 4.4 The background to this matter relates to a uniquely complex set of matters which originated some five years ago. Two decisions of the Council, one in relation to new pay structures for 20 senior managers in the authority, and the other in relation to the 'buy-out' of annual leave and essential user car allowances (for 43 and 40 officers respectively) were found by the Wales Audit Office (WAO) to have been unlawful. This arose due to the Wales Audit Office findings that there had been failings in the decision making and governance arrangements in both cases. The WAO issued two Public Interest Reports and the Council accepted their findings.
- 4.5 In relation to the first of these issues – the senior pay review – the matter was reported to the police by one or more individuals.
- 4.6 The matter was referred to Avon and Somerset Constabulary for investigation. In due course three senior officers were charged with Misconduct in Public Office.
- 4.7 All three were suspended during the Crown Court proceedings, which took some time to come before the court. At the request of Avon and Somerset Constabulary, disciplinary investigations which had been commenced, in some cases, were postponed during the period while the case was before the courts.
- 4.8 The charges against the three individuals were dismissed by the court in October 2015. At this point, the Leader of the Council referred a series of potential disciplinary issues against the three officers to the Council's Investigating and Disciplinary Committee (the IDC) in order that they could investigate and determine whether there were matters which ought to be referred to a Designated Independent Person for investigation. All three were considered to be 'Statutory Officers' and any disciplinary matters therefore were governed by the Standing Orders Regulations (Wales) 2006. This statutory procedure has been withdrawn in England, but remains in force in Wales. This is noteworthy because the legislation removes the Council's powers, as the employer, to impose any disciplinary action in relation to a statutory officer unless and to the extent that it has been recommended following a full investigation by a Designated Independent Person (DIP). This legislation is reflected in the disciplinary procedure adopted by the Council in relation to Statutory Officers.
- 4.9 The IDC agreed to continue with the suspension of the three officers, although following challenge this was subsequently changed, by mutual consent, to 'Special Leave' as the statutory rules dictate maximum periods for which suspension could be in place, and these had already expired even before the court case ended.
- 4.10 The IDC appointed a Preliminary Investigator to assist with their deliberations as to whether any of the disciplinary issues amounted to a case to answer that required further investigation by a (Designated Independent Person (DIP) as required by the legislation. His report was received in September 2016. The IDC completed their consideration of the matters in March 2017, which culminated in a decision that there were some disciplinary allegations in respect of each of the three officers which should be referred to a DIP for formal investigation. Not all

of the allegations considered by the IDC were agreed as matters which should be referred on to a Designated Independent Person, and many were dismissed. Members should be aware that the fact that the IDC concluded there was sufficient evidence to warrant an investigation by a DIP does not imply that anyone is guilty of any disciplinary offence and it is likely that all three officers would vigorously refute and defend the allegations against them.

- 4.11 The sole purpose of the preliminary investigation was to determine whether there was any or sufficient evidence in relation to the referred issues to warrant an actual investigation by a DIP. This took 16 months. The Council incurred over £500,000 in legal costs during this period and the employment costs of the three officers who were suspended, and then on special leave, amounted to £680,000 during the preliminary investigation. This is in addition to £1.4 million costs incurred during the period while the authority was awaiting the outcome of the court case.
- 4.12 Where it is decided that a Designated Independent Person should be appointed, this must be done by mutual agreement by all parties. Since the decision of the IDC to refer some of the original disciplinary issues to a DIP in March of this year, two names of a possible DIP candidates were submitted by the Council, and one by one of the three officers, but no agreement could be reached. There was some further delay due to the Council elections in May of this year and the need to reconstitute the IDC in order for them to deal with this matter. The appointment of the DIP has now been referred to the Welsh Government who are required by the legislation to appoint a DIP in such circumstances.
- 4.13 The best indications are, based on the experience of the preliminary investigation, that the actual DIP investigation could take at least 12 months to complete. Given that it would be likely to involve the collection of much more detailed evidence, and from a much wider range of 'witnesses', than the preliminary investigation, it is possible that this anticipated timeframe could extend further. Moreover, if there were to be further legal challenges during, and possibly after the conclusion of the DIP's investigation such as judicial review or claims for unfair dismissal and discrimination, it is difficult to assess with any certainty just how long the matter might yet take to determine to its final conclusion. It is believed that the cost of employing the services of this Designated Independent Person alone will be in the region of £100,000. However, this is an estimate as the person is not yet appointed and their costs and their estimate of the duration of the investigation is unknown. It is quite possible that the costs could well exceed this estimate. If these two settlements are agreed then there will still be costs in engaging a DIP for the remaining case, but this is expected to be lower than if all three cases were proceeding and this is dealt with in detail in the second part of this report.
- 4.14 This situation has been very costly and highly disruptive to the effective management and administration of the Council. There are numerous officers employed in an interim capacity, including the three senior posts of Chief Executive, Director of Corporate Services and Monitoring Officer. There are numerous 'back-fill' and temporary arrangements in the teams supporting these officers, and this is not at all conducive to effective running of a large council which is facing enormous financial and other pressures.
- 4.15 Over the past few months, the council has entered into negotiations with the three officers to determine whether a mutually agreed settlement could be reached as an alternative to proceeding with the full DIP investigation. Two of the officers, Deputy Chief Executive Mr Barnett, and Head of Legal Services, Mr Perkins, have reached a provisional agreement which is outlined fully in the second part of this report. In both cases, the cost of this settlement is less than the cost of continuing with the investigation.

5. WELL-BEING OF FUTURE GENERATIONS

- 5.1 This report does not relate to matters which would fall within the scope of the Well-being of Future Generations Act.

6. EQUALITIES IMPLICATIONS

- 6.1 The council has taken advice in relation to the employment law consideration relating to these proposed settlements, including any equalities implications, and there are no relevant considerations which need to be considered in that regard.

7. FINANCIAL IMPLICATIONS

- 7.1 The financial aspects and implications of this matter are dealt with in detail in Part 2 of this report.

8. PERSONNEL IMPLICATIONS

- 8.1 If these settlements are agreed it will be for the council to determine how both posts should be filled. Both posts are currently being performed via interim arrangements, but the positions will need to be advertised and recruitment conducted in accordance with council rules.
- 8.2 Because of current and anticipated future financial constraints all vacancies are now assessed before deciding whether to fill the vacancy, and this is particularly the case with senior management positions. That exercise need to be undertaken.

9. CONSULTATIONS

- 9.1 The outcome of these negotiations – but not the actual detail of the settlement terms – has been reported to the council's Investigating and Disciplinary committee. The details have been provided to officers from Welsh Government, the Wales Audit Office and the council's external auditors, Grant Thornton. These are dealt with more fully in Part 2 of this report.

10. RECOMMENDATIONS

- 10.1 The recommendations are contained in Part 2 of this report.

11. REASONS FOR THE RECOMMENDATIONS

- 11.1 As outlined in Part 2 of the Report.

12. STATUTORY POWER

- 12.1 The Local Authorities (Standing Orders)(Wales) (Amendment) Regulations 2014 requires decisions relating to the remuneration of Chief Officers to be taken by resolution of the authority itself. The Council's Constitution states that the "Determination of level and any change in the level of remuneration to be paid to a Chief Officer is delegated to Council". The Localism Act 2011 includes any amounts payable by the authority to the Chief Officer on ceasing to hold office as falling within the definition of 'remuneration' and this decision must, therefore, be considered and taken by Full Council.

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Background Papers:

Wales Audit Office Public Interest Reports on Senior Pay Review and Buy-outs of essential user car allowances and annual leave.

Wales Audit Office Special Inspection Report on Governance 2016