

Full Council

4 May 2021

Report of the Chief Operating Officer

**Public Interest Report -
Early Termination of the Chief Executive's Employment Contract**

Summary

1. This report formally responds to Council the Public Interest Report recently issued by the Council's external auditor.
2. That report at Annex A outlines the findings from work carried out to review the severance payments made to the former Chief Executive. The council is legally required to consider the report and recommendations within one month of issue.
3. The Chief Operating Officer, has reviewed the report and developed a draft action plan that includes individual officer responsibilities and timescales. This is attached at Annex B to this report.

Recommendations

4. Members are asked to:
 - i. Accept the recommendations of the Public Interest Report presented by the external auditor.
 - ii. Approve the action plan that is attached as Annex B.
 - iii. Agree that the Audit and Governance Committee receive updates on implementation of the Action Plan.

Reason

It is a legal requirement for Members to consider the Public Interest Report and respond to the recommendations contained within it.

Background and Analysis

5. The business case for the former Chief Executive's severance package was agreed by Staffing Matters & Urgency Committee on the 17th February 2020.
6. As part of their work to audit of the 2019/20 Statement of Accounts, the External Auditor has conducted a review of the severance package, and in particular the decision made at Staffing Matters and Urgency Committee on 17th February 2020.
7. On 31st March 2021, the External Auditor presented their Audit Completion Report to Audit & Governance Committee. That report outlined their audit findings and concluded that, with the exception of the issues identified on this one specific decision, there are proper arrangements in place to secure economy, efficiency and effectiveness in the use of resources. However they also reported upon concerns regarding the severance package of the former Chief Executive. In doing so, they also confirmed that the issues being considered did not have a material impact on the financial statements and therefore an unqualified opinion on the final accounts was expected.
8. In respect of the severance package, and in particular the meeting of Staffing Matters and Urgency Committee on 17th February 2020, and the report presented, the External Auditor has now produced the attached Public Interest Report (Annex A) and makes five recommendations for the Council to consider. Their report sets out their description in respect of this issue, their issues of concern and their subsequent recommendations to the Council.
9. The Council has worked with the External Auditor in recent months in respect of these issues. Officers have provided significant information during this period, of which some has been taken on board by them and reflected in the report. The discussions with the External Auditor have been conducted in a professional and confidential manner.
10. In respect of the specific recommendations, these are fully accepted and the action plan will be prioritised. There is recognition within the Council that these measures should strengthen specific arrangements. It should be noted that some issues are very much ongoing matters, and ensuring these remain a permanent feature of the Council's governance framework will be important. Annex B

provides the detail in relation to the Council's response to these recommendations.

11. Council Officers have previously acknowledged that there were some aspects that could have been done better, and this was recognised in comments made at the Audit & Governance Committee on 31st March 2021. It is accepted that the report presented to Staffing Matters and Urgency Committee in February 2020, could have been more consistent in terms of the rationale for the severance.
12. Throughout key stages of the process the Council took external legal advice. This included advice relating to the payments made.
13. The Tribunal case submitted was complex and covered allegations during the employment contract contrary to section 47B of the Employment Rights Act 1996.
14. This was a complex HR issue with different facets, including potential claims, potential ongoing costs, delays, long term sickness absence, and the Administration's desire for a more streamlined senior management structure to deliver significant savings.
15. The report presented to Staffing Matters and Urgency Committee in seeking to cover these different issues resulted in the report not being completely consistent as to the basis of the exit package with references to retirement, reorganisation and settlement claims. It would have been preferable to have one clear rationale, which would then have allowed information relating to the basis of minimum payments, and exercise of discretions to be clear to members and the public.
16. Whilst the report could have been clearer on the distinction of discretionary and statutory elements presented to Staffing Matters and Urgency, without the amounts that were paid there would almost certainly have been no agreement at that point in time. Without an agreement further costs would have been incurred.
17. Staffing Matters and Urgency were presented with the option to not approve at that meeting and it was highlighted within that report that if not approved then the council would progress with the restructure. That would have resulted in further costs continuing to be incurred, including the salary costs of the Chief Executive. A full restructure

at a senior management level could be expected to take a number of months.

18. In addition if it was not agreed at that time the tribunal case would have progressed and costs incurred to the council through that process.
19. In respect of discretions, it should be noted that the Council policy on discretions did allow up to 104 weeks' pay as an exit discretion. The report could have been clearer on the use of discretions and options available.
20. It is accepted that deletion of the post was not visible at the meeting of Staffing Matters & Urgency Committee in February 2020, and a fuller restructure proposal would potentially have assisted. There was a clear desire from the Administration for a more streamlined and more efficient senior management structure.
21. Since the report to Staffing Matters and Urgency Committee in February 2020, two subsequent further reports have been presented to Staffing Matters and Urgency Committee, which have restructured the senior management of the Council, with long term savings in the region of £200,000 per annum, significantly in excess of the £50,000 that was referenced in the report to Staffing Matters and Urgency in February 2020.
22. The management and support of a member of staff on long term sickness absence is the same regardless of which position they hold. Cases are complex and can involve many medical practitioners. In this instance there were numerous home visits, support provided and occupational health referrals carried out throughout the long term absence, commencing in June 2019, of which all parties actively participated in. There were a number of Occupational Health referrals, telephone assessments and face to face appointments by the provider over the full period of absence.
23. There was clearly a delay in the Occupational Health provision in this case and hence the reason for the extension to full pay. This is a discretion available to the Council and one which was applied. This decision remained under constant review.

Statutory Framework for Reports in the Public Interest

24. Reports in the Public Interest are issued under the provisions of the Local Audit and Accountability Act 2014. The Act sets out a number of statutory requirements that a Local Authority must comply with following the publication of the Report.
25. The Council is required under the Act to consider the recommendations of the Report and decide what action to take in response in public at a dedicated Council meeting. It is also essential that all decisions made by the Council with regard to its governance and other improvements are taken in full cognisance of the report's recommendations.

Publicising the Report

26. Following receipt of the Report, the Council is required to ensure that it is brought to the attention of public, elected members, its partner organisations and stakeholders.
27. At 4pm on 19th April 2021, a notice was published on the Council's website that included the full report, the formal public notice, further information about the report, details on how to receive a copy of the report via the post and details on how to inspect a copy of the report at the Council's offices.
28. We promoted the report via a press release which was covered in York Press, Yorkshire Post, York Mix, Yorkshire Live, BBC online (Yorkshire) and shared a link to it on corporate social media channels.
29. A formal public notice was also published in the York Press on 24th April 2021, which was the first available edition of the paper in which the notice could be included.
30. The Council issued a press release to ensure that the report was brought to the attention of the press and public.
31. Full copies of the report were also sent to all Elected Members on 19th April 2021. Information was also included within the regular staff email from the Chief Operating Officer.
32. Mazars has provided a copy of the report to the Secretary of State of Housing, Communities and Local Government.

Responding to the Report

33. Within a period of one month beginning with the day upon which the Council received the report, the Council is required to hold an Extraordinary Council Meeting (this meeting) to consider the report.
34. In considering this report, Members of the Council are asked to vote on accepting the recommendations, the Council response in the form of the Action Plan, and to agree the process for monitoring the action plan.
35. A notice has been published on the Council's website on 20th April 2021, providing all relevant details of this meeting to comply with Local Audit and Accountability Act requirements.
36. In addition, the agenda and supporting papers have been published to comply with the usual Local Government Act 1972 requirements.
37. Following the Extraordinary Council Meeting, the Council is required to publish a public notice, approved by the external auditor, which summarises the outcome of the meeting. That notice will be published in both the local press and on the Council's website following this meeting.
38. It is of course also the case that since February 2020, the Council has, for just over a year, been responding to the Pandemic. During this period the organisation has responded effectively, with this being recognised in a recent peer challenge.
39. The Council's response to the pandemic clearly needs to continue focusing on supporting business, and our communities, in the City's recovery. Over the last 12 months the Council has actively worked with key partners, and this partnership work will continue along with all the other critical work the Council undertakes. It will be important that the Council continues to work in a constructive manner to tackle the challenges facing the city, and this will require officers and members to work constructively together going forward.

Options

40. Not applicable.

Corporate Priorities

41. The report contributes to the overall effectiveness of the Council's governance and assurance arrangements.

Implications

42. **Financial** - Mazars will be requesting an increased fee for the additional work carried out to complete this report. There will be a resource cost to implementing the recommendations outlined within the report but it is anticipated this will be covered by existing budget provision.
43. **Legal** - The Council's External Auditor has the right at any point during their audit to issue a Report in the Public Interest if, at any point, they have significant concerns to raise which should be placed in the public domain. As detailed within the body of this report, following formal receipt of a Report in the Public Interest, the Council must comply with the provisions set out in Schedule 7 of the Local Audit and Accountability Act 2014 in terms of convening a public meeting of Council to accept the report and to agree the Council's response in the form of an Action Plan. The External Auditor has the right to comment on the progress made against the Action Plan and this will occur via the reporting to future meetings of the Audit and Governance Committee.
44. There are no HR, equalities, crime and disorder, IT or property implications arising from this report.

Risk Management

45. The Council will fail to comply with legislative requirements if it does not consider this report.

Contact Details

Author:	Chief Officer responsible for the report:		
Ian Floyd Chief Operating Officer	Ian Floyd Chief Operating Officer		
	Report Approved		Date 23/04/21
Wards Affected: All			
For further information please contact the author of the report			

Background Papers:

Agenda and Minutes of the Staffing Matters and Urgency Committee held on 17th February 2020

Agenda and Minutes of the Audit & Governance Committee held on 31st March 2021

Annex:

Annex A – Public Interest Report

Annex B – Council Response and Action Plan