

Notice of a public meeting of

Audit and Governance Committee

- To:** Councillors Pavlovic (Chair), Fisher (Vice-Chair), Lomas, Mason, Wann, Webb and Carr
- Date:** Wednesday, 29 September 2021
- Time:** 5.30 pm
- Venue:** George Hudson Room, West Offices, Station Rise, York YO1 6GA

AGENDA

1. Declarations of Interest

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they might have in respect of business on this agenda.

2. Minutes (Pages 3 - 8)

To approve and sign the minutes of the meeting held on 8 September 2021.

3. Public Participation

At this point in the meeting members of the public who have registered to speak can do so. Members of the public may speak on agenda items or on matters within the remit of the committee.

Please note that our registration deadlines have changed to 2 working days before the meeting, in order to facilitate the management of public participation at our meetings. The deadline for registering at this meeting is at **5.00pm on Monday 27 September 2021**.

To register to speak please visit www.york.gov.uk/AttendCouncilMeetings to fill in an online registration form. If you have any questions about the registration form or the meeting please contact Democratic Services on the details at the foot of the agenda.

Webcasting of Public Meetings

Please note that, subject to available resources, this meeting will be webcast including any registered public speakers who have given their permission.

The meeting can be viewed live and on demand at www.york.gov.uk/webcasts. During coronavirus, we've made some changes to how we're running council meetings. See our coronavirus updates (www.york.gov.uk/COVIDDemocracy) for more information on meetings and decisions.

4. Progress against the Action Plan (Pages 9 - 14)

The Committee requested the assistance of the Local Government Association to offer external support in assurance monitoring against the delivery of the Action Plan. The Local Government Association has agreed to assist and their scoping document is now provided for consideration.

5. Public Interest Report - Exit Strategy: Guidance on the use of settlement agreements including special severance payments (Pages 15 - 68)

Following the meeting on 8 September 2021, the observations on the draft Guidance have been taken into account and accordingly a revised document is now attached. Should the Committee agree to the revisions, it is invited to make a recommendation to the Staffing Matters and Urgency Committee for this document to be approved.

6. MIY Contract Management (Pages 69 - 74)

To provide an update on actions taken in response to the Veritau report on Make It York contract arrangements.

7. Audit and Governance Work Plan (Pages 75 - 78)

To receive a draft plan of reports currently expected to be presented to future meetings of the Committee up to April 2022.

8. Urgent Business

Any other business which the Chair considers urgent under the Local Government Act 1972.

Democracy Officer:

Name: Robert Flintoft

Telephone: (01904) 555704

Email: robert.flintoft@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details are set out above.

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Coronavirus protocols for attending Committee Meetings at West Offices

If you are attending a meeting in West Offices, you must observe the following protocols.

Good ventilation is a key control point, therefore, all windows must remain open within the meeting room.

If you're displaying possible coronavirus symptoms (or anyone in your household is displaying symptoms), you should follow government guidance. You are advised not to attend your meeting at West Offices.

Testing

The Council encourages regular testing of all Officers and Members and also any members of the public in attendance at a Committee Meeting. Any members of the public attending a meeting are advised to take a test within 24 hours of attending a meeting, the result of the test should be negative, in order to attend. Test kits can be obtained by clicking on either link: [Find where to get rapid lateral flow tests - NHS \(test-and-trace.nhs.uk\)](https://www.nhs.uk/conditions/coronavirus/covid-19/testing/rapid-lateral-flow-tests/), or, [Order coronavirus \(COVID-19\) rapid lateral flow tests - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/order-coronavirus-covid-19-rapid-lateral-flow-tests). Alternatively, if you call 119 between the hours of 7am and 11pm, you can order a testing kit over the telephone.

Guidelines for attending Meetings at West Offices

- Please do not arrive more than 10 minutes before the meeting is due to start.
- You may wish to wear a face covering to help protect those also attending.
- You should wear a face covering when entering West Offices.
- Visitors to enter West Offices by the customer entrance and Officers/Councillors to enter using the staff entrance only.
- Ensure your ID / visitors pass is clearly visible at all time.
- Regular handwashing is recommended.
- Use the touchless hand sanitiser units on entry and exit to the building and hand sanitiser within the Meeting room.
- Bring your own drink if required.
- Only use the designated toilets next to the Meeting room.

Developing symptoms whilst in West Offices

If you develop coronavirus symptoms during a Meeting, you should:

- Make your way home immediately
- Avoid the use of public transport where possible
- Follow government guidance in relation to self-isolation.

You should also:

- Advise the Meeting organiser so they can arrange to assess and carry out additional cleaning
- Do not remain in the building any longer than necessary
- Do not visit any other areas of the building before you leave

If you receive a positive test result, or if you develop any symptoms before the meeting is due to take place, **you should not attend the meeting.**

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City of York Council

Committee Minutes

Meeting Audit and Governance Committee

Date 8 September 2021

Present Councillors Pavlovic (Chair), Fisher (Vice-Chair), Lomas, Mason, Wann, Webb And Carr

Apologies

20. Declarations of Interest

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which they may have in respect of business on the agenda. None were declared.

21. Minutes

Members enquired as to whether an update was available on the identifying of funds to cover the costs associated with the Action Plan. Officers confirmed that the Section 151 officer was not in attendance but would be able to bring an update to the Committee meeting on the 29 September 2021.

Resolved: That the minutes of the meeting held on 28 July 2021 be approved and then signed by the Chair as a correct record.

22. Public Participation

It was reported that there had been four registrations to speak at the meeting under the Council's Public Participation Scheme. However, one of the speakers was unable to join due to technical issues.

Gwen Swinburn noted that she felt there had been a governance failure in relation to the questions of proportionality and the use of substitutes at the Customer and Corporate Services Scrutiny Management Committee (CCSMC) and questioned members conduct at the meeting. Asked that advice and solutions be shared regarding the meeting and asked that

proportionality rules be shared. She also requested that all training for Members be held on Open Data and reviewed for Joint Standards Committee and this Committee and asked that chairs training be given to all members. Finally she asked about public involvement in the review of the Constitution and what progress had been made in recruiting an independent person.

Andy Mendus asked about the Councils policies regarding the use of settlement agreements noting that the report seemed to suggest there should be both used in exceptional circumstances, but also would be commonly used. He also enquired as to their use in redundancies noting that they had been missed in the Settlements report. He also asked whether it was correct for the Council to outline a budget for settlement agreements and raised concerns that the proposals would not deal with issues raised in the Public Interest Report.

Councillor Kilbane noted that he believed it was disappointing that the guidance on Members not being allowed to take part in a decision on the use of a settlement agreement in cases where a complaint was made against that Member had been included, but noted his thoughts on its connection to the decisions around the exit of the former Chief Executive and the role of the Leader of the Council in the settlement decision. He noted the delay to the review of the Constitution and asked that a further postponement be made to allow for a significant consideration and wide public engagement in the forming of the Constitution.

23. Report in the Public Interest: Exit Strategies: Guidance on the use of Settlement Agreements Including Special Severance Payments

The Committee considered the report and the proposed 'Exit Strategies Guidance on the use of Settlement Agreements including Special Severance Payments'. Officers noted the new proposed Exit Strategy guide in relation to the Action Plan following the Public Interest Report (PIR) and noted that if agreed by the Committee then it would be referred to consider the adoption and implementation of the strategy.

Members enquired about the reference to Chief Officer in the proposed Exit Strategy, noting that further clarification could be given to identify who classified as a Chief Officer in relation to the strategy. Officers confirmed that Chief Officer would include Assistant Directors, Directors, Corporate Directors, and the

Chief Operating Officer. It was also noted that in the case of the exit of a statutory officer such as the Monitoring Officer or the Section 151 Officer, reciprocal arrangements had been made with North Yorkshire County Council to ensure the Council would be supported. Members also noted that redundancy wasn't included in the strategy which was confirmed would be added.

Financial considerations when deciding on tribunals and the possible use of special severance payment were highlighted as requiring evidence of best value for money and Members enquired whether this would include independent legal advice. It was confirmed that the Chief Legal Officer would perform their function to provide legal advice to the Council, but would often seek independent legal advice which would be legal advice owned and presented by the Chief Legal Officer. The Committee discussed whether the Council should have to seek independent legal advice in relation to any exit agreements with Chief Officers. The role of Internal Audit was raised and whether their opinion should always be sought when determining value for money.

The options on when to settle and what criteria for a settlement were raised and officers noted some of the challenges of a criteria due to each case being unique. It was noted that it can be challenging to identify the full costs related to an exit due to potential future costs, however, it was noted that the Section 151 officer would consider a whole range of costs when determining value for money. Members also enquired about whether actions could be taken in cases where the Council accepted mistakes, prior to a tribunal and appeal. Officers confirmed that this would be the case and could be made clearer within the proposed strategy.

The Committee also discussed how the new proposed exit strategy could address issues highlighted in the PIR as part of its role in the Action Plan. Members enquired about whether the new strategy would ensure any payments could not be described incorrectly for when Members considered any exit payments and whether the new business case would be clear enough to ensure it avoids errors. Officers confirmed changes should create further clarity, for instance in the business case document it was noted further information would be required to ensure better decision making. The Committee requested therefore that the old strategy and business case document be

shared with the Committee and Staffing Matters and Urgency when the Committee considers them to compare changes in policy.

Members also discussed training regarding any changes to the Exit Strategy and the use of documents in relation to these. Officers confirmed that a range of new training would be made available to Members, with an aim to improve Member training across the Council. In relation to those that could use the proposed strategy early training would be put in place should the new strategy be adopted to ensure Members were prepared for meetings it could be required in.

24. Review of the Council's Constitution

The Chair stated that the Committee would not consider the Review of Council's Constitution at the meeting, he noted the need for Members to have additional time to consider the changes to the Constitution and Members considered how they would wish to review of the Constitution in future meetings.

Officers outlined a request to amend the current Council Constitution, they noted that in March 2020 the Committee amended the Standing Orders relating to substitutes at a number of Committees. It was noted that this amendment to Planning Committee had meant that due to named substitutes not always being available attendance had been affected, this had been made harder due the Covid-19 pandemic. Members considered and agreed to recommend to Full Council to amend the standing orders to allow for more Members to be available to substitute at Planning meetings.

Resolved:

- i. That the Committee recommends to Full Council to amend Section 4B of the Constitution to remove Planning from the meetings which can only use named Substitutes;
- ii. That the Committee defer the review of the Constitution to the Committees next meeting on 29 September 2021.

Reason: To ensure Planning meetings can maintain sufficient Membership at Committee meetings. To allow for

additional time to consider the Council's Constitution.

25. Urgent Business

The chair outlined that the Mazars Annual Audit Letter would not be ready for the Committee meeting on the 29 September 2021 and therefore asked the Committee to consider an amendment to the Committee work plan for the 20 October 2021 meeting.

Members discussed how to consider the Constitution and whether it could be considered and signed off in sections. Officers noted that the Committee could consider the Constitution in sections but noted that it would need to be signed off in full by Full Council and noted the timescale for meeting the Action Plan. Noting the length of the Constitution to consider members also discussed the prospect of the creating a cross party working group to discuss the Constitution.

Resolved:

- i. The Mazars Annual Audit Letter to be deferred from the 29 September 2021 to 20 October 2021 meeting, the chair and vice chair to consider and ensure the Committee work plan is up to date;
- ii. A cross party working group to discuss the Constitution be arranged.

Reason: To ensure that the Committee manages its work plan effectively and to ensure enough time is dedicated to the consideration of the Constitution.

Cllr Pavlovic, Chair

[The meeting started at 5.33 pm and finished at 7.50 pm].

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AUDIT & GOVERNANCE COMMITTEE**29 September 2021**

Report of the Director of Governance

Report in the Public Interest: Assurance Support from the Local Government Association**Summary**

At one of its earlier meetings, the Audit & Governance Committee requested the assistance of the Local Government Association to offer external support in assurance monitoring against the delivery of the Action Plan. The Local Government Association has agreed to assist and their scoping document is now provided for consideration.

Background

The Council is required to address the recommendations set out in the Report in the Public Interest dated 19th April 2021 and accepted by Full Council on 4th May 2021. An Action Plan was also approved by Full Council and Audit & Governance Committee has been asked to oversee the delivery of the Action Plan.

Work to address the various aspects of the Action Plan has already commenced, and the Local Government Association (LGA) has accepted the Committee's invitation to support the Council and their scoping document as to how this will be undertaken is attached at Annex 1 of this report.

Implications

Financial – None directly arising from this report. The Council is a member of the LGA and therefore the support from the LGA is at nil cost.

Human Resources (HR) – none directly arising from this report

Equalities – none directly arising from this report

Legal – As detailed within this report, the Council has received and accepted the Report in the Public Interest dated 19th April 2021, and therefore is required to undertake necessary steps to address the highlighted recommendations. The various individual steps required in addressing these recommendations may in themselves require legal advice.

Crime and Disorder, Information Technology and Property - none directly arising from this report

Recommendations

The Audit & Governance Committee is invited to consider and accept the scoping proposal prepared by the Local Government Association as detailed at Annex 1 of this report.

Reasons for the Recommendation

To add external assurance to the Council to ensure appropriate compliance with the agreed Action Plan.

Options

The Committee can chose to reject the scoping document and support from the Local Government Association.

Author & Chief Officer responsible for the report: Janie Berry, Director of Governance & Monitoring Officer

**Report
Approved**

Date 16/09/2021

Specialist Implications Officer(s):

Debbie Mitchell, Chief Finance Officer and Section 151

Trudy Forster, Head of HR

Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report

Background Papers:

Agenda, Reports and Minutes of the meeting of Full Council dated 4th
May 2021

Agenda, Reports and Minutes of the Audit & Governance Committee

**Annex 1 – LGA Assurance Exercise on Actions Resulting from the
19 April 2021 Public Interest Report City of York Council**

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Assurance Exercise on Actions Resulting from the 19 April 2021 Public Interest Report City of York Council

The City of York Council (CYC) received a Public Interest Report (PIR) from Mazars dated 19 April 2021 into the Early Termination of the Chief Executive's Employment Contract. The City Council officially received this report at Full Council on 4 May 2021 alongside an Action Plan. On 16 June the Audit and Governance Committee received an update of progress against the Action Plan and an "Implementation Plan" that supports the Action Plan.

The Local Government Association proposes a piece of support to help assure CYC that it has taken appropriate, timely and effective action in response to the PIR's 5 recommendations.

Scope and focus

The LGA would propose to offer assurance to CYC that it has taken appropriate, effective and timely action in response to the PIR by answering 3 questions:

1. Are the Council's Implementation and Action Plans appropriate and sufficient to cover the issues raised in the PIR and specifically the 5 recommendations within it?
2. Have the actions within the Implementation and Action Plans been implemented/carried out in the planned way?
3. Will the completed actions have, or be likely to have in due course, the desired impact in terms of the changes in the systems, processes, behaviours and culture that the PIR implied were needed.

Note that the answers to each of these 3 questions will, to some extent, be subjective. But the answers to the 3rd question will be the hardest to ascertain and, whilst the LGA will make best endeavours to answer this question, we may need to suggest to the Council, further follow up work to assess impact in the longer run.

Timing and process

The LGA will conduct some of this work through desktop analysis and evidence gathering of plans, actions and timelines. We would want to see the Implementation and Action Plans, any further related Project Plans or documentary evidence.

The desktop work will be supplemented by a limited number of meetings between all, or part of, the LGA team and members, officers and stakeholders at the Council.

This Assurance exercise will be a robust but constructive activity. We will give you honest feedback, which will allow you to be clear whether your actions have been effective or whether there are still areas that need attention.

The LGA would propose to report back to the Council, in the form of a (probably interim) written report, for the Audit and Governance Committee meeting on 29 September 2021.

We will then aim to finalise our feedback in the form of a final report, for the Audit and Governance Committee meeting on 20 October 2021. As suggested above, we may suggest further work if we feel it has not been possible to answer question 3 sufficiently by that stage.

There will be no direct costs to the Council of receiving this Peer Assurance Exercise.

Proposed Team

We would propose a team of:

- An experienced Monitoring Officer/Governance Officer - Sharon Bridglalsingh
- Director, Law and Governance, Milton Keynes Council
- An HR expert – Sarah Ward, Principal Adviser – Workforce, LGA
- An LGA Facilitator/Manager, Mark Edgell

We would want to ensure both the Council and the LGA were happy with the team members selected and have done so.

Mark Edgell, LGA
14 September 2021



AUDIT & GOVERNANCE COMMITTEE**29 September 2021**

Report of the Director of Governance

Report in the Public Interest: Exit Strategies: Guidance on the use of Settlement Agreements including Special Severance Payments**Summary**

Following the meeting on 8th September 2021, the observations on the draft Guidance have been taken into account and accordingly a revised document is now attached.

Should the Committee agree to the revisions, it is invited to make a recommendation to the Staffing Matters and Urgency Committee for this document to be approved.

Recommendations

The Audit & Governance Committee is invited to recommend the following:

1. That the Staffing Matters and Urgency Committee at their next meeting consider the Exit Strategies: Guidance on the use of Settlement Agreements including Special Severance Payments and approve its adoption and immediate implementation;
2. That the Head of HR liaise with the Executive and the Corporate Management Team to ensure consistent compliance with the Guidance.
3. That the Head of Internal Audit will provide an annual report to the Audit & Governance Committee detailing compliance with this Guidance and the Council's use of special severance payments.

Reasons for the recommendations

To ensure compliance with the recommendations detailed by the Council's External Auditor in the Report in the Public Interest dated 19th April 2021.

Options

The Audit & Governance Committee can chose not to accept the recommendations contained within this report however to do so would hinder the Council's ability to comply with the Action Plan prepared in response to the Report in the Public Interest.

Background

On 4th May 2021, Council received a Report in the Public Interest dated 19th April 2021, and in doing so agreed an Action Plan to address the recommendations contained therein.

Of those, Recommendations One, Two and Five related to the Council's framework for the management of exit strategies and the use of special severance payments.

In response the Council has now, following consultation with the Trade Unions, Internal Audit and with taking into account external legal advice produced the draft Guidance which appears as Appendix One to this report. This Guidance also takes into account the recently published guidance from MHCLG relating to exit payments.

Audit & Governance Committee are asked to review the attached guidance and consider a recommendation to the Staffing Matters and Urgency Committee on 20th September 2021 for its approval and implementation.

The current Protocol for Settlement Agreements is appendix 3 to this report.

Implications

Financial - none directly related to this report but decisions made in accordance with the Guidance will be the subject of financial consideration on a case by case basis.

Human Resources (HR) - none directly related to this report but decisions made in accordance with the Guidance will be the subject

of staffing and employment related considerations on a case by case basis.

Equalities - none directly related to this report but decisions made in accordance with the Guidance will be the subject of any equality considerations on a case by case basis.

Legal – the Council is required to take all steps to ensure compliance with the Action Plan approved in response to the Report in the Public Interest and compliance with the Action Plan is monitored by the Audit & Governance Committee. Specialist external employment law advice has been received in respect of the Guidance to ensure it complies with relevant legislation and the Statutory Guidance issued by the MHCLG.

Crime and Disorder, Information Technology and Property – none directly arising from this report

Author & Chief Officer responsible for the report: Janie Berry, Director of Governance

Report Approved **Date** 20 September 2021

Specialist Implications Officer(s): Trudy Forster, Head of HR, Debbie Mitchell, Chief Finance Officer

Wards Affected: *List wards or tick box to indicate all* **All**

For further information please contact the author of the report

Background Papers:

Report in the Public Interest dated 19th April 2021, and received by Full Council on 4th May 2021, together with the Action Plan approved by Full Council on 4th May 2021.

8th September 2021 Audit & Governance Agenda

Appendices

Appendix One - Exit Strategies: Guidance on the use of Settlement Agreements including Special Severance Payments (includes tracked changes).

Appendix Two - Exit Strategies: Guidance on the use of Settlement Agreements including Special Severance Payments (clean report).

Appendix Three – Protocol for Settlement Agreements and Non-Disclosure Clause



Exit Strategies

Guidance on the use of Settlement Agreements including Special Severance Payments

DOCUMENT INFORMATION & REVISION HISTORY

Title	Exit Strategies - Guidance on the use of Settlement Agreements including Special Severance Payments
Contact for Enquiries	Trudy Forster

Issue No	Issue Date	Author(s)	Nature of Amendment
V1	12/08/21	Trudy Forster	Original version written by Trudy Forster Changes made by Sam Healy (Barrister, Dere Street Barristers)) – Accepted Changes Made by GMB – Accepted
V2	17/08/21	Trudy Forster	Changes made by Internal Audit
V3	19/08/21	Trudy Forster	Changes made by HR to item 4.4
V4	10/09/21	Trudy Forster	Changes made by Trudy Forster, Janie Berry and Debbie Mitchell following A&G Committee feedback Changes made by Sam Healy (Barrister, Dere Street Barristers))

This guidance applies to all employees of CYC, including Chief Officers

1. Definitions:

Settlement Agreements – (formerly known as Compromise Agreements)	A legally binding agreement signed by employer and employee resolving a dispute between them, such as the terms on which the employee’s employment is ended.
Special Severance Payments	Additional payments made to employees beyond what they are entitled to under their contracts of employment or statutory law.
Confidentiality Clause (often referred to as non-disclosure agreements or ‘NDAs’)	A clause in a Settlement Agreement that prevents the unauthorised disclosure by the employee of confidential information relating to their employment or its termination.
Statutory elements of pay	Those elements of pay that the employee is owed as a matter of statutory law applicable to all employees in the UK. For example, the right to be paid for annual leave or the right to receive a minimum amount when made redundant (so-called ‘statutory redundancy’)
Contractual Payments	Those elements of pay that the employee is owed under their contract of employment. For example, the normal remuneration paid for work done.
Best Value Duty	The best value duty, as set out in section 3 of the Local Government Act 1999 (“the 1999 Act”), provides that “ <i>A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness</i> ”. The best value duty is relevant to local authority duties to deliver a balanced budget (Part 1 of the Local Government Finance Act 1992), provide statutory services (including adult social care and children’s services) and secure value for money in spending decisions. This will include decisions to make Special Severance Payments.
Chief Officer	Chief Officer ay City of York Council are all staff on posts at Assistant Director,

	Director, Corporate Director and Chief Operating Officer
Statutory Officers	Head of Paid Service – Chief Operating Officer Monitoring Officer – Director of Governance Section 151 Officer – Chief Finance Officer/AD Finance
Legal Advice	Legal advice may come from within the council where the advice is for non-chief officers Legal advice will be sought from external independent legal advisers where the payment is for a chief officer.

2. Reference docs

Cabinet Office Guidance on Settlement Agreements, Special Severance Payments on Termination of Employment and Confidentiality Clauses

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817156/Cabinet-Office-guidance-on-settlement-agreements-special-severance-payments-on-termination-of-employment-and-confidentiality-clauses.pdf

Guidance on Public Sector Exit Payments: Use of Special Severance Payments

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989770/SPECIAL_SEVERANCE_GUIDANCE_v3_FINAL.pdf

MHCLG Guidance

Statutory guidance on the making and disclosure of Special Severance Payments by local authorities



3. Introduction

- 3.1 There are numerous reasons why people leave employment, from normal resignation by the employee through to dismissal of the employee by the employer.
- 3.2 The majority of the cases are straight forward, follow normal processes and do not result in any additional payments (Special Severance Payments). However, there are a smaller number of cases where the contract of employment is terminated through dismissal by the employer or more complicated circumstances where the contract is terminated by mutual consent of the employer and employee.

- 3.3 It is in these cases where the council must ensure that any additional payments (Special Severance Payments) being made, over and above Contractual and statutory payments, are in line with legislation and the 'Best Value Duty'.
- 3.4 There are contractual and statutory elements of pay that have to be paid upon an exit, regardless of the reasons for the exit. Examples include outstanding annual leave and the minimum statutory redundancy payment, where the post held by the employee is being made redundant.
- 3.5 Special Severance Payments do not fall into the category of payments that the council is obliged to pay a departing employee and do not usually represent value for money. As such, they should only be used in truly exceptional circumstances and after following due process. The size of any Special Severance Payment must be kept as small as possible in order to provide value for money for the taxpayer and the economic rationale for the payment must be clear. Where a Special Severance Payment is made there must be complete transparency about that fact and the reasons why it is being made.
- 3.6 The council should not be using Special Severance Payments as a soft option. For example, to avoid management action or disciplinary processes against an employee, unwelcome publicity, embarrassment or reputational damage for the council.
- 3.7 As a council we need to ensure that before making a Special Severance Payment we follow the correct approval process and that those making the decision have all the relevant the information upon which to make a properly informed decision.
- 3.8 Where a Special Severance Payment is to be made to an employee, the council will agree a written Settlement Agreement with that employee. Any Settlement Agreement may include a Confidentiality Clause, but only where legal advice is to the effect that it is proportionate, reasonably necessary and in the best interests of the council to do so. The precise contents of a Confidentiality Clause will vary from case to case. A Confidentiality Clause cannot be used to prevent an employee from making a protected disclosure (so-called 'whistleblowing').
- 3.9 The purpose of this guidance then is to:
 - Set out the Council's view that Special Severance Payments do not usually represent value for money and should only be considered in truly exceptional circumstances
 - Set out the criteria that the Head of Paid Service should consider in deciding if there are exceptional circumstances in which it may be appropriate to make a Special Severance Payment, in conjunction with the Section 151 Officer and Monitoring Officer.
 - Clarify the approval process for making a Special Severance Payment

- Clarify the disclosure and reporting requirements where Special Severance Payments are made.

3.10 This guidance does not cover Special Severance Payments made in maintained schools. School Governing Bodies are responsible for those decisions.

4. Reasons for Leaving

4.1 Employees can leave employment through a number of routes, the primary one being resignation. However, there are occasions where staff will be dismissed by the employer or where there is a mutual agreement between employer and employee to end the employment relationship.

4.2 **Resignation**

Where an employee has resigned, this exit will be progressed through the completion of the leaver's paperwork, found at the following link: <https://colin.york.gov.uk/besupported/hr/leaving-the-council-1/leavers-procedure/>. In terms of payment, the employee will usually only be entitled to their normal earnings up to the date of their resignation and any outstanding holiday entitlement. Line Managers are encouraged to work with employees who are resigning to use their annual leave prior to their leave date. Payment of outstanding leave should be by exception.

4.3 **Retirement**

Normal Retirement

Where an employee retires and has access to their pension with no discretion, this exit will be progressed through the completion of the leaver's paperwork found here. As with a resignation, the employee is usually entitled to their normal earnings up to the date of their retirement and any outstanding holiday entitlement.

Where staff retire and have access to their pension with a discretion the Pension Discretion policy should be followed.

<https://colin.york.gov.uk/media/419742/cyc-pension-discretions-policy-statement-2021-final-published.pdf>

Early Retirements in the efficiency of the service –

These are early retirements that will facilitate an increase in the efficiency of the business unit in question, for example through the introduction of more effective working methods or the provision of an opportunity to introduce new skills into service delivery. Normally, the business case will demonstrate how the additional costs arising out of the early retirement can be met within the first five years from the date of retirement.

4.4 ***Ill Health Retirement***

Where a member of staff retires through ill health, there is a discrete process to follow. This is explained in the Manager's Toolkit which is found in the Attendance Management page:

<https://colin.york.gov.uk/besupported/hr/absence-leave-and-flexible-working/attendance-management/>

4.5 ***Dismissal***

Where an employee has been dismissed following a disciplinary/dismissal process hearing, the employee will usually receive all statutory and contractual pay elements. Where an employee is dismissed, it will usually be with notice although the employer may instead elect to make a payment in lieu of notice ('PILON'). This is where the employer pays the employee what they would have received during the notice period without the employee being required to work. Where the employee is dismissed for gross misconduct, they will not usually be entitled to be dismissed with notice or to receive PILON.

There may be instances following a dismissal where it is appropriate to enter into a Settlement Agreement with the employee. For example, to prevent the employee bringing a claim before an Employment Tribunal and receiving compensation from such. This may give rise to the making of a Special Severance Payment to the employee dependent upon the circumstances and the protection of the council.

4.6 **Redundancy**

Redundancies are a form of dismissal, and can happen when an employee's job no longer exists. This may be due to needing to reduce the workforce, close part of the business, or when certain work is no longer needed. If an employee is made redundant they may be eligible for redundancy pay and other certain rights such as time off to look for work. There are two forms of redundancy:

- **Compulsory Redundancy**

This is where the employee does not agree to being made redundant and the decision is one taken by the employer. The Council will try to minimise the need for compulsory redundancies but there may be occasions when this is unavoidable.

- **Voluntary Redundancy**

Where redundancies are planned, one of the measures the council can take to avoid compulsory redundancies is to seek volunteers in the first instance. This is known as Voluntary Redundancy, where both employer and employee agree that the employment should be ended by way of redundancy. Where the council is running a specific voluntary redundancy programme it will be publicised and employees informed.

4.7 ***Mutual termination of contract of employment***

There are instances where both parties wish to terminate the contract of employment. In these cases of mutual termination there will usually be a Settlement Agreement reached between the parties and this may include the making of a Special Severance Payment. As part of a mutual termination the council is normally required to pay contractual and statutory pay elements to the employee.

5. Special Severance Payments

- 5.1 Special Severance Payments are paid to employees outside of normal statutory or contractual entitlements when leaving employment in public service, whether they resign, are dismissed or there is a mutual termination of employment.
- 5.2 Special Severance Payments are any payments on termination of employment which do not correspond to an established contractual, statutory or other right. The types of payments which are Special Severance Payments will vary according to an employees' circumstances, and therefore the examples below are illustrative only. In the case of any doubt as to whether a payment constitutes a Special Severance Payment, approval should be sought from the Employment Law adviser.
- 5.3 Any payment in respect of which the right to payment is disputed by the employer, in whole or in part, should be treated as a Special Severance Payment which requires approval.
- 5.4 The following types of payments are likely to constitute Special Severance Payments:
 - Any payments reached under a Settlement Agreement other than those amounting to statutory elements of pay or contractual payments. For example, payments proposed to be made in return for the employee not bringing legal proceedings or discontinuing existing proceedings;
 - The value of any employee benefits or allowances which are allowed to continue beyond the employee's agreed exit date;
 - Write-offs of any outstanding loans;
 - Any paid special leave, such as gardening leave;
 - Any honorarium payments or gifts;
 - Any hardship payments;
 - Any payments to employees for retraining related to their termination of employment.
- 5.5 The following types of payments may constitute Special Severance Payments, depending on the terms of the individual's contract, relevant statutory provisions, any non-statutory applicable schemes and other relevant terms and conditions:

- Pay in lieu of notice (PILON), depending on the contractual basis for the payment;
- Pension strain payments arising from employer discretions to enhance standard pension benefits.

5.6 The following do not constitute Special Severance Payments:

- Statutory redundancy payments;
- Contractual redundancy payments, whether applicable to voluntary or compulsory redundancy, and whether agreed by collective agreement or otherwise;
- Payment for untaken annual leave;
- Payments ordered by a court or tribunal.

6. CYC Approval Process

6.1 Special Severance Payments when staff leave employment of the council should be exceptional. They require Statutory Officer (Head of Paid Service, Section 151 and Monitoring Officer) approval because they are novel, contentious and potentially repercussive.

6.2 Where the Special Severance Payment is being made for a Chief Officer, approval is required from the Statutory Officers mentioned above and from the Staffing Matters and Urgency Committee.

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It is important to ensure that Executive Member approval is sought before any offers of a Special Severance Payment, whether oral or in writing, are made to an employee. The process required to seek approval is as follows:

6.4.1 Chief Officer completes the Business Case at Annex A.

6.4.2 The form requires approval from of the relevant Executive Member and Officers, Finance Manager, HR Manager, Head of Paid Service, Chief Finance Officer and Monitoring Officer.

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transparent and negotiated avoiding conflicts of interest. This is especially important in respect of Chief Officers.

6.6 *Criteria for the assessment of cases*

The Business Case (Annex A) must be completed in full before any approval and decision is made. This business case must be sufficiently strong to be subject to scrutiny and all relevant information included upon which a decision can be made.

6.7 *Completion of the Business Case (Annex A)*

The Business Case must include consideration of the matters set out below.

6.7.1 Overview of the department / team in which the individual works, including:

- a) Key deliverables
- b) Size of workforce

6.7.2 The terms of employment and any contractual clauses relevant to the proposed Special Severance Payment.

6.7.3 The business reasons for the proposed Special Severance Payment, eg to settle a grievance or employment tribunal claim.

6.7.4 Key dates and decisions that led to the need of a Special Severance Payment.

6.7.5 The total cost of the exit payment proposed to be made to the employee, clearly stating the Special Severance Payment separately to contractual and statutory elements of pay.

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There must be evidence that the cost of the Special Severance Payment represents value for money and that the Best Value Duty will be fulfilled. The economic rationale for the Special Severance Payment should be clear and include consideration of:

- a) Whether the departure of the employee from the council can be achieved at a lower cost to the council, including whether the employee would be prepared to leave receiving statutory and contractual payments only;
- b) Any efficiency savings from workplace reform, such as reduction in posts etc.;
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- 6.9 Where relevant, independent legal assessment of an organisation's chances of winning or losing an employment tribunal claim and the potential value of any award that may be made.

6.10 **Non-financial considerations**

There must be evidence that all options other than Special Severance Payments have been exhausted including:

- a) Evidence that, where relevant, a performance improvement plan in line with internal performance management processes has been considered and not unreasonably discounted. Special Severance Payments should not be used to avoid performance management processes.
- b) Evidence of good performance of the individual if the exit is not performance related.
- c) Evidence of other measures to prevent the exit, including full efforts made to perform reasonable adjustments or where relevant, redeployment within the council.

- 6.11 Consideration should be given to the number of other Special Severance Payments agreed in the last 12 months and those the payment of which is pending.

6.12 **Repercussive Risk**

There should be evidence of consideration of the wider impact on the council of the proposed Special Severance Payment and whether it is likely to set a precedent for future cases. For example:

- a) Evidence that the Special Severance Payment represents a one-off cost (to resolve a specific issue);
- b) Evidence of consideration of the impact of making a Special Severable Payment on the wider workforce, including whether such is likely to encourage further claims by employees;
- c) Evidence of the completion of a lessons learnt exercise and measurable improvement plan (including dates) to reduce the risk of the council having to make further Special Severance Payments. This is linked with the action required in paragraph 6.15(c)

6.13 **Particular considerations for Special Severance Payments**

Any payment proposed as part of a Settlement Agreement in excess of contractual, statutory and other entitlements is a Special Severance Payment and authorisation must be given by Statutory Officers and/or the Staffing Matters & Urgency Committee before such a settlement is agreed.

- 6.14 Where there is a dispute between the council and employee or ex-employee, the council should consider, at an early stage, the likelihood of an employment tribunal or other claim and seek legal advice on the potential costs involved. The council must first consider non-financial avenues to resolve disputes in collaboration with the parties involved.
- 6.15 Proposals for Special Severance Payments, should consider the following (where appropriate):
- a) Evidence of attempts to resolve a grievance before it escalates to an employment tribunal claim.
 - b) Precedents from other parts of the public sector may not always be a reliable guide in any given case;
 - c) Legal advice that a Special Severance Payment appears to offer good value for the council may not be conclusive since such advice may not take account of the wider public interest;
 - d) Even if the cost to the council of defeating an apparently frivolous or vexatious claim will exceed the likely cost of the proposed exit payment to the employee, it may still be desirable to take the case to formal proceedings given :
 - Winning such cases will discourage frivolous or vexatious claims and demonstrate that the council does not reward such claims.
- 6.16 The council's default approach is not to settle, we must ensure Special Severance Payments are only made in exceptional circumstances and represent value for money. Special Severance Payments will only be considered if: Attempts to settle the dispute without Special Severance Payments have been made and either
- (a) Legal advice has been sought and clearly recommends settling the claim with the making of the proposed Special Severance Payment; or
 - (b) Where legal advice is finely balanced, there is a clearly evidenced value for money case and settling is clearly the best course of action, satisfying the best value duty.
- 6.17 It is especially important that those individuals within the council who are the subject of complaints brought by an employee play absolutely no role in deciding whether a Special Severance Payment should be made to that employee. Special Severance Payments must not be used to avoid the dealing with complaints/grievances or to avoid unwelcome publicity or embarrassment.

7.0 Recording of Special Severance Payments

- 7.1 All approved Special Severance payments will be recorded within Finance. Any exit payment must be recorded and reported on an annual

basis to central government.

8.0 Audits of Special Severance Payments

- 8.1 Staffing Matters and Urgency will approve or not, via the Business Case (Annex A) any Special Severance Payment for Chief Officers
- 8.2 All approved Special Severance Payments for any employee, excluding Chief Officers, will be noted at Staffing Matters and Urgency. Staffing Matters and Urgency will receive in private session a copy of the Business Case, Annex A.
- 8.3 Internal Audit will carry out a six monthly review of the Special Severance Payments made in the council and will report their findings to Audit & Governance on an annual basis.
- 8.4 Audit & Governance will receive an annual report from Internal Audit on the council's compliance with this framework and therefore the use of Special Severance Payments by the council.
- 8.5 This guidance will be reviewed by the Corporate Consultation/Negotiating committee (CCNC) on an annual basis and any amendments will be reported to Staffing Matters and Urgency. This process will incorporate **consideration of the information mentioned above** collated by Internal Audit **and Audit and Governance**.

Annex A**Proforma for Special Severance Business Cases**

Special Severance Business Case	
Chief Officer Responsible	
Directorate and Team	
Date case is submitted	
Date decision is needed and why	
Executive Member – Name and Approval Date	
Confirm notification to Internal Audit Name and Date	
For Chief Officers confirm notification to External Audit Name and Date	
Finance Manager Name , Approval and Date	
HR Manager Name , Approval and Date	
Monitoring Officer Approval and signature, Date	
Chief Finance Officer Approval and Signature, date	
Head of Paid Service Approval and Signature	
For Chief Officers Date of Staffing Matters & Urgency Committee	
Circumstances of the Case	
Overview of the Case and Organisation	

Please provide a brief case history, with key dates, summarising how the situation has come about. Specify organisations key deliverables, size and previous use of severance payments

Terms of employment

What are individual's terms of employment (length of service, current salary, contractual notice period, type of contract (e.g. fixed term, part time)?

Breakdown of proposed exit payment

Please list each type of payment separately e.g. Statutory redundancy, pay in lieu of notice, Special Severance Payment

Proposed ways of proceeding

What is the individual's contractual entitlement, and why do you propose to make a Special Severance Payment? What is the scope for reference to tribunal (incl. summary of the legal assessment of the chances of winning or losing the case, potential consequences)? Other options considered?

Financial Considerations

The value for money consideration underlying the proposed payment

A Value for Money assessment is the process of comparing all the costs, including those of any alternative options, with potential efficiency savings from the proposal and any non-financial benefits, such as the impact on staff morale and the achievement of Council objectives. It is not possible to provide a comprehensive list of all the factors to take into account but some examples are provided below; break-down of costs, including legal costs; potential tribunal awards, efficiency savings from workplace reform and/or any associated repercussive risks e.g. conduct issues to the delivery of the organisation's objectives. It must provide a rationale for proposed level of settlement (with pay comparison i.e. x months' pay / y% of salary); costs of alternative options, and why a proposed settlement offer demonstrates the best value for money solution. When considering vfm, non-financial costs (i.e. effect on staff morale, achievement of business objectives, the impact of not agreeing the proposal, reputational risk and improving productivity) will also be considered.



Non- Financial Considerations
Performance management
<i>Specify if performance has been an issue for the individual. Provide details of performance management procedures followed if applicable.</i>
Management procedures
<i>Specify measures taken to prevent the exit, including efforts to perform reasonable adjustments, resolve grievances or redeploy.</i>
Repercussive risk
Lessons learnt from this case
<i>Explain what lessons have been learned and how management systems have been/will be improved to avoid future occurrences of similar cases.</i>
Wider impact and potential precedents
<i>Explain whether this case might have an impact on or set a precedent for other existing or future cases.</i>
Any other useful information

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Exit Strategies

Guidance on the use of Settlement Agreements including Special Severance Payments

DOCUMENT INFORMATION & REVISION HISTORY

Title	Exit Strategies - Guidance on the use of Settlement Agreements including Special Severance Payments
Contact for Enquiries	Trudy Forster

Issue No	Issue Date	Author(s)	Nature of Amendment
V1	12/08/21	Trudy Forster	Original version written by Trudy Forster Changes made by Sam Healy (Barrister, Dere Street Barristers) – Accepted Changes Made by GMB – Accepted
V2	17/08/21	Trudy Forster	Changes made by Internal Audit
V3	19/08/21	Trudy Forster	Changes made by HR to item 4.4
V4	10/09/21	Trudy Forster	Changes made by Trudy Forster, Janie Berry and Debbie Mitchell following A&G Committee feedback Changes made by Sam Healy (Barrister, Dere Street Barristers)

This guidance applies to all employees of CYC, including Chief Officers

1. Definitions:

Settlement Agreements – (formerly known as Compromise Agreements)	A legally binding agreement signed by employer and employee resolving a dispute between them, such as the terms on which the employee’s employment is ended.
Special Severance Payments	Additional payments made to employees beyond what they are entitled to under their contracts of employment or statutory law.
Confidentiality Clause (often referred to as non-disclosure agreements or ‘NDAs’)	A clause in a Settlement Agreement that prevents the unauthorised disclosure by the employee of confidential information relating to their employment or its termination.
Statutory elements of pay	Those elements of pay that the employee is owed as a matter of statutory law applicable to all employees in the UK. For example, the right to be paid for annual leave or the right to receive a minimum amount when made redundant (so-called ‘statutory redundancy’)
Contractual Payments	Those elements of pay that the employee is owed under their contract of employment. For example, the normal remuneration paid for work done.
Best Value Duty	The best value duty, as set out in section 3 of the Local Government Act 1999 (“the 1999 Act”), provides that “A <i>best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness</i> ”. The best value duty is relevant to local authority duties to deliver a balanced budget (Part 1 of the Local Government Finance Act 1992), provide statutory services (including adult social care and children’s services) and secure value for money in spending decisions. This will include decisions to make Special Severance

	Payments.
Chief Officer	Chief Officer at City of York Council are all staff on posts at Assistant Director, Director, Corporate Director and Chief Operating Officer
Statutory Officers	Head of Paid Service – Chief Operating Officer Monitoring Officer – Director of Governance Section 151 Officer – Chief Finance Officer/AD Finance
Legal Advice	Legal advice may come from within the council where the advice is for non-chief officers Legal advice will be sought from external independent legal advisers where the payment is for a chief officer.

2. Reference docs

Cabinet Office Guidance on Settlement Agreements, Special Severance Payments on Termination of Employment and Confidentiality Clauses
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817156/Cabinet-Office-guidance-on-settlement-agreements-special-severance-payments-on-termination-of-employment-and-confidentiality-clauses.pdf

Guidance on Public Sector Exit Payments: Use of Special Severance Payments
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989770/SPECIAL_SEVERANCE_GUIDANCE_v3_FINAL.pdf

MHCLG Guidance

Statutory guidance on the making and disclosure of Special Severance Payments by local authorities



SSPSG.pdf

3. Introduction

- 3.1 There are numerous reasons why people leave employment, from normal resignation by the employee through to dismissal of the employee by the employer.

- 3.2 The majority of the cases are straight forward, follow normal processes and do not result in any additional payments (Special Severance Payments). However, there are a smaller number of cases where the contract of employment is terminated through dismissal by the employer or more complicated circumstances where the contract is terminated by mutual consent of the employer and employee.
- 3.3 It is in these cases where the council must ensure that any additional payments (Special Severance Payments) being made, over and above Contractual and statutory payments, are in line with legislation and the 'Best Value Duty'.
- 3.4 There are contractual and statutory elements of pay that have to be paid upon an exit, regardless of the reasons for the exit. Examples include outstanding annual leave and the minimum statutory redundancy payment, where the post held by the employee is being made redundant.
- 3.5 Special Severance Payments do not fall into the category of payments that the council is obliged to pay a departing employee and do not usually represent value for money. As such, they should only be used in truly exceptional circumstances and after following due process. The size of any Special Severance Payment must be kept as small as possible in order to provide value for money for the taxpayer and the economic rationale for the payment must be clear. Where a Special Severance Payment is made there must be complete transparency about that fact and the reasons why it is being made.
- 3.6 The council should not be using Special Severance Payments as a soft option. For example, to avoid management action or disciplinary processes against an employee, unwelcome publicity, embarrassment or reputational damage for the council
- 3.7 As a council we need to ensure that before making a Special Severance Payment we follow the correct approval process and that those making the decision have all the relevant the information upon which to make a properly informed decision.
- 3.8 Where a Special Severance Payment is to be made to an employee, the council will agree a written Settlement Agreement with that employee. Any Settlement Agreement may include a Confidentiality Clause, but only where legal advice is to the effect that it is proportionate, reasonably necessary and in the best interests of the council to do so. The precise contents of a Confidentiality Clause will vary from case to case. A Confidentiality Clause cannot be used to prevent an employee from making a protected disclosure (so-called 'whistleblowing').

3.9 The purpose of this guidance then is to:

- Set out the Council's view that Special Severance Payments do not usually represent value for money and should only be considered in truly exceptional circumstances
- Set out the criteria that the Head of Paid Service should consider in deciding if there are exceptional circumstances in which it may be appropriate to make a Special Severance Payment, in conjunction with the Section 151 Officer and Monitoring Officer.
- Clarify the approval process for making a Special Severance Payment
- Clarify the disclosure and reporting requirements where Special Severance Payments are made.

3.10 This guidance does not cover Special Severance Payments made in maintained schools. School Governing Bodies are responsible for those decisions.

4. Reasons for Leaving

4.1 Employees can leave employment through a number of routes, the primary one being resignation. However, there are occasions where staff will be dismissed by the employer or where there is a mutual agreement between employer and employee to end the employment relationship.

4.2 Resignation

Where an employee has resigned, this exit will be progressed through the completion of the leaver's paperwork, found at the following link: <https://colin.york.gov.uk/besupported/hr/leaving-the-council-1/leavers-procedure/>. In terms of payment, the employee will usually only be entitled to their normal earnings up to the date of their resignation and any outstanding holiday entitlement. Line Managers are encouraged to work with employees who are resigning to use their annual leave prior to their leave date. Payment of outstanding leave should be by exception.

4.3 Retirement

Normal Retirement

Where an employee retires and has access to their pension with no discretion, this exit will be progressed through the completion of the leaver's paperwork found here. As with a resignation, the employee is usually entitled to their normal earnings up to the date of their retirement and any outstanding holiday entitlement.

Where staff retire and have access to their pension with a discretion the Pension Discretion policy should be followed.

<https://colin.york.gov.uk/media/419742/cyc-pension-discretions-policy-statement-2021-final-published.pdf>

Early Retirements in the efficiency of the service

These are early retirements that will facilitate an increase in the efficiency of the business unit in question, for example through the introduction of more effective working methods or the provision of an opportunity to introduce new skills into service delivery. Normally, the business case will demonstrate how the additional costs arising out of the early retirement can be met within the first five years from the date of retirement.

4.4 **Ill Health Retirement**

Where a member of staff retires through ill health, there is a discrete process to follow. This is explained in the Manager's Toolkit which is found in the Attendance Management page:

<https://colin.york.gov.uk/besupported/hr/absence-leave-and-flexible-working/attendance-management/>

4.5 **Dismissal**

Where an employee has been dismissed following a disciplinary/dismissal process hearing, the employee will usually receive all statutory and contractual pay elements. Where an employee is dismissed, it will usually be with notice although the employer may instead elect to make a payment in lieu of notice ('PILON'). This is where the employer pays the employee what they would have received during the notice period without the employee being required to work. Where the employee is dismissed for gross misconduct, they will not usually be entitled to be dismissed with notice or to receive PILON.

There may be instances following a dismissal where it is appropriate to enter into a Settlement Agreement with the employee. For example, to prevent the employee bringing a claim before an Employment Tribunal and receiving compensation from such. This may give rise to the making of a Special Severance Payment to the employee dependent upon the circumstances and the protection of the council.

4.6 **Redundancy**

Redundancies are a form of dismissal, and can happen when an employee's job no longer exists. This may be due to needing to reduce the workforce, close part of the business, or when certain work is no longer needed. If an employee is made redundant they may be eligible for redundancy pay and other certain rights such as time off to look for work. There are two forms of redundancy:

Compulsory Redundancy

This is where the employee does not agree to being made redundant and the decision is one taken by the employer. The Council will try to minimise the need for compulsory redundancies but there may be occasions when this is unavoidable.

Voluntary Redundancy

Where redundancies are planned, one of the measures the council can take to avoid compulsory redundancies is to seek volunteers in the first instance. This is known as Voluntary Redundancy, where both employer and employee agree that the employment should be ended by way of redundancy. Where the council is running a specific voluntary redundancy programme it will be publicised and employees informed.

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There should be evidence of consideration of the wider impact on the council of the proposed Special Severance Payment and whether it is likely to set a precedent for future cases. For example:

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 - (c) Legal advice that a Special Severance Payment appears to offer good value for the council may not be conclusive since such advice may not take account of the wider public interest;
 - (d) Even if the cost to the council of defeating an apparently frivolous

or vexatious claim will exceed the likely cost of the proposed exit payment to the employee, it may still be desirable to take the case to formal proceedings given :

- Winning such cases will discourage frivolous or vexatious claims and demonstrate that the council does not reward such claims.

6.16 The council's default approach is not to settle, we must ensure Special Severance Payments are only made in exceptional circumstances and represent value for money. Special Severance Payments will only be considered if: Attempts to settle the dispute without Special Severance Payments have been made and either

- (a) Legal advice has been sought and clearly recommends settling the claim with the making of the proposed Special Severance Payment; or
- (b) Where legal advice is finely balanced, there is a clearly evidenced value for money case and settling is clearly the best course of action, satisfying the best value duty.

6.17 It is especially important that those individuals within the council who are the subject of complaints brought by an employee play absolutely no role in deciding whether a Special Severance Payment should be made to that employee. Special Severance Payments must not be used to avoid the dealing with complaints/grievances or to avoid unwelcome publicity or embarrassment.

7.0 Recording of Special Severance Payments

7.1 All approved Special Severance payments will be recorded within Finance. Any exit payment must be recorded and reported on an annual basis to central government.

8.0 Audits of Special Severance Payments

8.1 Staffing Matters and Urgency will approve or not, via the Business Case (Annex A) any Special Severance Payment for Chief Officers

8.2 All approved Special Severance Payments for any employee, excluding Chief Officers, will be noted at Staffing Matters and Urgency. Staffing Matters and Urgency will receive in private session a copy of the Business Case, Annex A.

8.3 Internal Audit will carry out a six monthly review of the Special Severance Payments made in the council and will report their findings to Audit & Governance on an annual basis.

- 8.4 Audit & Governance will receive an annual report from Internal Audit on the council's compliance with this framework and therefore the use of Special Severance Payments by the council.
- 8.5 This guidance will be reviewed by the Corporate Consultation/Negotiating committee (CCNC) on an annual basis and any amendments will be reported to Staffing Matters and Urgency. This process will incorporate **consideration of the information mentioned above** collated by Internal Audit **and Audit and Governance**.

Annex A

Proforma for Special Severance Business Cases

Special Severance Business Case	
Chief Officer Responsible	
Directorate and Team	
Date case is submitted	
Date decision is needed and why	
Executive Member – Name and Approval Date	
Confirm notification to Internal Audit Name and Date	
For Chief Officers confirm notification to External Audit Name and Date	
Finance Manager Name , Approval and Date	
HR Manager Name , Approval and Date	
Monitoring Officer Approval and signature, Date	

Chief Finance Officer Approval and Signature, date	
Head of Paid Service Approval and Signature	
For Chief Officers Date of Staffing Matters & Urgency Committee	
Circumstances of the Case	
Overview of the Case and Organisation	
<p><i>Please provide a brief case history, with key dates, summarising how the situation has come about. Specify organisations key deliverables, size and previous use of severance payments</i></p>	
Terms of employment	
<p><i>What are individual's terms of employment (length of service, current salary, contractual notice period, type of contract (e.g. fixed term, part time)?</i></p>	
Breakdown of proposed exit payment	
<p><i>Please list each type of payment separately e.g. Statutory redundancy, pay in lieu of notice, Special Severance Payment</i></p>	

Proposed ways of proceeding
<p><i>What is the individual's contractual entitlement, and why do you propose to make a Special Severance Payment? What is the scope for reference to tribunal (incl. summary of the legal assessment of the chances of winning or losing the case, potential consequences)? Other options considered?</i></p>
Financial Considerations
The value for money consideration underlying the proposed payment
<p><i>A Value for Money assessment is the process of comparing all the costs, including those of any alternative options, with potential efficiency savings from the proposal and any non-financial benefits, such as the impact on staff morale and the achievement of Council objectives. It is not possible to provide a comprehensive list of all the factors to take into account but some examples are provided below; break-down of costs, including legal costs; potential tribunal awards, efficiency savings from workplace reform and/or any associated repercussive risks e.g. conduct issues to the delivery of the organisation's objectives. It must provide a rationale for proposed level of settlement (with pay comparison i.e. x months' pay / y% of salary); costs of alternative options, and why a proposed settlement offer demonstrates the best value for money solution. When considering vfm, non-financial costs (i.e. effect on staff morale, achievement of business objectives, the impact of not agreeing the proposal, reputational risk and improving productivity) will also be considered.</i></p>

Non- Financial Considerations
Performance management
<i>Specify if performance has been an issue for the individual. Provide details of performance management procedures followed if applicable.</i>
Management procedures
<i>Specify measures taken to prevent the exit, including efforts to perform reasonable adjustments, resolve grievances or redeploy.</i>
Repercussive risk
Lessons learnt from this case
<i>Explain what lessons have been learned and how management systems have been/will be improved to avoid future occurrences of similar cases.</i>
Wider impact and potential precedents
<i>Explain whether this case might have an impact on or set a precedent for other existing or future cases.</i>
Any other useful information



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Statutory guidance on the making and disclosure of Special Severance Payments by local authorities

Introduction

Most public sector workers enjoy statutory and contractual redundancy terms that are significantly better than the minimum statutory redundancy entitlement and are often higher than the value of redundancy payments made in the private sector. The Government is of the view that paying additional, discretionary sums on top of these entitlements (“special severance payments”) do not usually provide good value for money or offer fairness to the taxpayers who fund them and so, should only be considered in exceptional cases.

This guidance forms part of the best value regime. The best value duty, as set out in section 3 of the Local Government Act 1999 (“the 1999 Act”), provides that “A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. The best value duty is relevant to local authority duties to deliver a balanced budget (Part 1 of the Local Government Finance Act 1992), provide statutory services (including adult social care and children’s services) and secure value for money in spending decisions. This will include decisions to make Special Severance Payments.

Authorities subject to the best value duty (termed “best value authorities”) are defined in section 1 of the 1999 Act. A list of these bodies can be found on page 6 of this guidance.

This guidance also sets out the Government’s position on the use of Special Severance Payments made by local authorities.

The purpose of this guidance is to:

- Set out the Government’s view that Special Severance Payments do not usually represent value for money and should only be considered in truly exceptional circumstances
- Set out the criteria employers should consider in the exceptional circumstances in which it may be appropriate to make a Special Severance Payment
- Give examples of the truly exceptional circumstances in which Special Severance Payments may be appropriate
- Clarify the disclosure and reporting requirements for Special Severance Payments.

Redundancy payments can be an important mechanism to allow employers to reform and react to new circumstances in the workplace, but employers have a responsibility to ensure that Special Severance Payments are only made when there is a clear, evidenced justification for doing so. They should also ensure that all relevant internal policies and procedures have been followed and all alternative actions have been fully explored and documented.

In the exceptional circumstances where it is decided that a Special Severance Payment should be paid, it is the responsibility of both individual employers and sponsoring departments to ensure their Special Severance Payments arrangements are fair, proportionate, lawful and provide value for money for the taxpayer.

Chapter 1 – What is a special severance payment?

In the context of this guidance, Special Severance Payments are payments made to employees, officeholders, workers, contractors, and others outside of statutory, contractual or other requirements when leaving employment in public service. Employers may sometimes consider making such a payment in situations where the individual concerned resigns, is dismissed, or agrees a termination of contract. Which types of payments are Special Severance Payments will vary according to an employees' particular circumstances, and therefore the examples below are illustrative only.

It is established case-law¹ that such payments, where in accordance with legislation, may only be made where there is a convincing case that they are in the interests of taxpayers. Local authorities may not be generous at the expense of taxpayers and must genuinely consider payments to be in the public interest. In taking decisions elected members must make all proper enquiries and consider all available material that can help in coming to a decision.

The following types of payments are likely to constitute Special Severance Payments:

- a) Any payments reached under a settlement agreement between the employer and employee to discontinue legal proceedings without admission of fault;
- b) The value of any employee benefits or allowances which are allowed to continue beyond the employee's agreed exit date;
- c) Write-offs of any outstanding loans;
- d) Any paid special leave, such as gardening leave;
- e) Any honorarium payments or gifts;
- f) Any hardship payments;
- g) Any payments to employees for retraining related to their termination of employment

The following types of payments may constitute Special Severance Payments, depending on the terms of the individual's contract, relevant statutory provisions, any non-statutory applicable schemes and other relevant terms and conditions:

- a) Pay or compensation in lieu of notice (depending on the contractual basis for its payment);
- b) Pension strain payments arising from employer discretions to enhance standard pension benefits;

The following do not constitute Special Severance Payments:

- a) Statutory redundancy payments;

¹ In Re Hurlle-Hobbs's Decision (1944) 1 All E.R. 249

- b) Contractual redundancy payments, whether applicable to voluntary or compulsory redundancy, and whether agreed by collective agreement or otherwise
- c) Redundancy payments made in line with the requirements of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006;
- d) Payment for untaken annual leave;
- e) Payments ordered by a court or tribunal or agreed as part of a judicial or non-judicial mediation;
- f) Payments made to compensate for ill-health, injury or death of the worker.

Chapter 2 - Considerations for councils on potential Special Severance Payments

This Chapter provides guidance on relevant considerations for English local authorities in relation to making Special Severance Payments.

Local authorities must comply with the duty of Best Value explained in the introduction. In considering whether it is appropriate to make a Special Severance Payment, the Government expects local authorities to consider whether such a payment would be a proper use of public money.

Economy

Councils should be able to demonstrate their economic rationale behind proposed Special Severance Payments including consideration of:

- whether there is any feasible possibility of exiting the individual at a lower cost. Only where there is no such possibility should a Special Severance Payment be considered;
- how the exit payment will be perceived by the public and whether it is in line with the duty to manage taxpayers money appropriately;
- what alternative use could be made of that expenditure. All Special Severance Payments necessarily reduce the funds that would otherwise be available to deliver important public services;
- the setting of any potential precedent (e.g. where a Special Severance Payment is made to certain employees and not others);
- evidence for additionality, i.e. that those offered Special Severance Payments would not have, under any circumstances, been willing to leave with their statutory and contractual benefits alone.

Efficiency and effectiveness

In considering the impact of Special Severance Payments on efficiency and effectiveness, local authorities should:

- Seek legal advice on the prospects of successfully defending an employment tribunal claim, if an employee were to take a legal route to appeal any grounds of their employment being terminated. The chance of success and the costs likely to be incurred should be noted and weighed up against the costs of making a Special Severance Payments;
- Ensure that these payments are not used to avoid management action, disciplinary processes, unwelcome publicity or avoidance of embarrassment;
- Consider aligning with private sector practice, where payments are typically less generous. This is important given the added duty in the public sector to prudently manage taxpayers' money;
- Manage conflicts of interest to ensure that individuals who are the subject of complaints play absolutely no role in deciding whether cases should be settled from public funds.

Chapter 3 - Exceptional circumstances in which it may be appropriate to consider making Special Severance Payments

There may be exceptional circumstances where the existing statutory or contractual entitlements, or both, are insufficient to facilitate an exit or to offer sufficient compensation for loss of employment or office. This can apply to office holders as well as staff. These circumstances, which we expect to be truly exceptional and provide value for money, may be taken into account by local authorities in deciding whether or not to make a Special Severance Payment.

Authorities may consider a Special Severance Payment in order to set aside what would otherwise be a reduction in entitlement caused by a break in continuity of service (e.g. where a member of staff has taken a break in service to accompany their spouse on military service overseas).

Authorities may also consider a Special Severance Payment in order to settle disputes, where it can be properly demonstrated that other routes have been thoroughly explored and excluded. After receiving appropriate professional advice, it may then possibly be concluded that a special severance payment is the most suitable option and prudent use of public money.

Those approving a Special Severance Payment related to a settlement agreement should be provided with appropriate evidence that attempts were made to resolve disputes before they escalated to a legal claim. They should also bear in mind that even if the cost of defeating an apparently frivolous or vexatious claims will exceed the likely cost of that settlement to the employer, it may still be desirable to take the case to formal proceedings. This is because winning such cases will discourage future frivolous or vexatious claims and demonstrate that the council does not reward such claims.

Chapter 4 - Accountability and disclosure

Accountability

The Government expects that any Special Severance payments should be personally approved and signed off by the Chief Executive Officer (CEX), with a clear record of the Leader's approval and that of any others who have signed off the payment.

A system of legal duties also requires councillors to spend public money with regularity and propriety. Under section 151 of the Local Government Act 1972, "every local authority shall make arrangements for the proper administration of their financial affairs and shall secure that one of their officers [the section 151 officer or Chief Finance Officer] has responsibility for the administration of those affairs". The section 151 officer has an important role in holding councils to account and has duties to alert councillors and the auditor in the case of unlawful expenditure.

This role is complemented and reinforced by authorities' duty under section 5 of the Local Government and Housing Act 1989 to appoint a monitoring officer, who must report to the council when any proposal, decision or omission is likely to lead to contravention of any enactment, rule of law or statutory code.

As part of their duties, an authority's s151 Officer, and where appropriate, the Monitoring Officer, should take a close interest in and be able to justify any special severance payments that are made by that authority and in particular any payments made that are not consistent with the content of this guidance.

Disclosure

Clear and transparent reporting on exit payments is essential to make available better data on the number and level of exit payments made in local government. The availability of data on exit payments in the public domain by local authorities enables local accountability as well as effective management of public money and public confidence. In 2015, the Local Government Transparency Code was issued to increase democratic accountability through open access to information.²

MHCLG have initiated a new annual collection of data on exit payments (initially collecting data from 2014 – 2021) and the results will be published into official statistics and made available on the gov.uk website, subject to any necessary anonymisation or redaction to comply with data protection law. This data will help others to assess the number and level of exit payments made in local government.

Section 38 of the Localism Act 2011 requires the council to produce and publish a pay policy statement, which must include the authority's policies on termination payments. Further information on what the Localism Act 2011 requires can be found in existing guidance.³

In addition, Regulation 60 of the Local Government Pension Scheme Regulations 2013 requires local authorities to prepare a statement of its policy in relation to the exercise of the discretion to enhance pension benefits under Regulations 16(2)(e) and 16(4)(d) (funding of

² Local Government Transparency Code 2015,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf

³ Openness and accountability in Local Pay: Guidance under Section 40 of the Localism Act 2011

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85886/Final_Supplementary_Pay_Accountability_Guidance_20_Feb.pdf

additional pension), Regulation 30(6) (flexible retirement), Regulation 30(8) (waiving of actuarial reduction); and Regulations 31 (award of additional pension)

As well as following existing guidance⁴ on reporting exit payments councils should also disclose in their annual reports all redundancy payments, pension fund strain costs and other special severance payments made in consequence of termination of employment or loss of office (but excluding payments on death or ill-health retirement). All reporting should be anonymised and comply with data protection law.

List of bodies this guidance applies to

- an English local authority, including
 - a county council in England, a district council or a London borough council
 - the Council of the Isles of Scilly;
 - the Common Council of the City of London in its capacity as a local authority;
 - the Greater London Authority so far as it exercises its functions through the Mayor.

- a National Park authority [for a National Park in England]
- the Broads Authority
- the Common Council of the City of London in its capacity as a police authority;
- a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies, and a [metropolitan county fire and rescue authority in England]
- the London Fire Commissioner
- an authority established under section 10 of the Local Government Act 1985 (waste disposal authorities);
- an Integrated Transport Authority for an integrated transport area in England;
- an economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009;
- a combined authority established under section 103 of that Act;
- a sub-national transport body established under section 102E of the Local Transport Act 2008;
- Transport for London

⁴ CIPFA, Code of Practice on Local Authority Accounting in the United Kingdom 2020/21



Protocol for Settlement Agreements and Non Disclosure Clause

1. This protocol provides the process to follow when considering settlement agreements with members of staff. This will ensure that the correct approvals have been obtained and recorded and will ensure that we are able to provide assurance and oversight of the process to members.
2. Settlement agreements are legally binding contracts which can be used to end the employment relationship on agreed terms. Their main feature is that they waive an employee's right to make a claim to a court or employment tribunal on the matters that are specifically covered in the agreement. Settlement agreements may be proposed prior to undertaking any other formal process. They usually include some form of payment to the employee and may also include an agreed reference.
3. Settlement agreements are voluntary. Parties do not have to agree them or enter into discussions about them if they do not wish to do so. Equally the parties do not have to accept the terms initially proposed to them. There can be a process of negotiation during which both sides make proposals and counter proposals until an agreement is reached, or both parties recognise that no agreement is possible.
4. For a settlement agreement to be legally valid the following conditions must be met:
 - a) The agreement must be in writing;
 - b) The agreement must relate to a particular complaint or proceedings
 - c) The employee must have received advice from a relevant independent adviser on the terms and effect of the proposed agreement and its effect on the employee's ability to pursue that complaint or proceedings before an employment tribunal;
 - d) The independent adviser must have a current contract of insurance or professional indemnity insurance covering the risk of a claim by the employee in respect of loss arising from that advice;
 - e) The agreement must identify the adviser;
 - f) The agreement must state that the applicable statutory conditions regulating the settlement agreement have been satisfied.

5. Settlement agreements can be proposed by both CYC managers and employees. A settlement agreement proposal can be made at any stage of an employment relationship. How the proposal is made can vary depending on the circumstances but reasons for the proposal should be given when the proposal is made. The initial proposal may be oral although it must ultimately be put in writing. At this stage the conversation is protected and without prejudice.
6. The initial proposal should be considered by the Head of Service / Assistant Director, Legal, HR, and Finance. Where it is proposed to progress then the AD/Corporate Director should inform and gain approval from the Executive Member and from the Section 151 Officer/ Chief Executive. This will all be documented in the Settlement Agreement template, shown in Appendix 1.
7. Where the business case has been approved, as in paragraph 6 above, parties should be given a reasonable period of time to consider the proposed settlement agreement and a minimum period of 10 calendar days should be allowed to consider the proposed formal written terms of a settlement agreement and to receive independent advice, unless the parties agree otherwise.
8. Whilst not a legal requirement, CYC should allow employees to be accompanied at the meeting by a work colleague, trade union official or trade union representative.
9. Where a proposed settlement agreement based on the termination of the employment is accepted, the employee's employment can be terminated either with the required contractual notice or from the date specified in the agreement. The details of any payments due to the employee and their timing should be included in the agreement.
10. The Settlement Agreement Template (anonymised) will be sent to SMU for noting, after the agreement has been signed.
11. The use of a non disclosure clause within the settlement agreement may be used for the benefit of either CYC or the employee, but in general is included for the benefit of both parties. The clause is confidential and provides certainty and closure, whilst affirming the right of either party to make a protected disclosure (i.e. whistleblowing).

Template

Business Case – Settlement Agreements

Briefly outline the circumstances of the request to provide a settlement agreement. This should be very brief.

Please provide full details of the settlement proposal, not named individuals

Directorate:

Department:

Reason:

Overall total cost of the settlement:

Total cost and breakdown :

Please provide details of alternative courses of action and advantages and disadvantages of each. For example the potential cost (and resource) of following internal process.

Non Disclosure Clause

If this is included is there anything additional to the norm ?

Business Case prepared by:

Name of Manager:

Date:

Directorate Sign Off: Assistant Director / Director

To confirm date of discussion with Executive Member – signed below

Name of Manager:

Date:

Name of Executive Member

Date:

HR Comments:

Name:

Date:

Finance Comments

Name: ...

Date:

Legal Comments

Name: ...

Date:

Date submitted to Section 151 Officer / Chief Executive for approval:

Business case approved/not approved on

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Audit and Governance Committee

29 September 2021

Report of the Assistant Director Customer and Communities

Make It York Contract Management**Purpose of Report**

1. To provide an update on actions taken in response to the Veritau report on Make It York contract arrangements.

Recommendations

2. The committee is asked to note the measures taken to improve the contract management arrangements.

Reason: to improve the governance of Make It York.

Background

3. Veritau undertook an audit earlier this year into the Make It York (MIY) contract management arrangements. The purpose of this audit was to provide assurance to management that:
 - the contract agreement includes appropriate performance measures and controls to ensure effective information flow;
 - performance measures are correctly applied in monitoring service delivery;
 - there is effective financial monitoring of the contract;
 - contract activity remains compliant with current council policy and plans over the life of the contract;
 - support has been given during Covid-19 that is compliant with the contract, and government guidance.
4. Key findings from the report, issued on 29 March, were that:
 - a) Whilst the contract documents include performance measures which are measurable and are currently being reviewed in line with the contract specification, service user feedback has not been included as a performance measure in the service level agreement (SLA) despite the requirement

to collect relevant user feedback data being included in the specification. It is recommended that this is addressed.

- b) Whilst the responsibilities of MIY in relation to regular formal communication and the provision of reports is clearly set out in the contract, it was noted that there are no escalation procedures or penalties specified, e.g. for failing to meet reporting requirements.
 - c) Whilst the contract requires regular performance review meetings informed by quarterly performance narrative reports, reporting on the outcomes and targets specified in the SLA, these reports had not been produced since September 2018 meaning that the client meetings were therefore not fully informed on performance.
 - d) The monthly Key Account Management (KAM) report had also not been produced in the period October 2018 to December 2019.
 - e) Good controls are in place for financial monitoring of the contract. (It was noted that MIY had not been able to make its payments to the council in 20/21 due to the pandemic and that the council has been closely monitoring the current financial position of MIY).
 - f) A process for agreement of an MIY annual business plan and an associated refreshed SLA is in place; however, this process was not completed for 2019/20, due to a change in MIY's Managing Director. The process for 2020/21 was being followed but, due to the pandemic, this was taken off the forward plan (and a temporary SLA appropriate to the circumstances of the pandemic was drawn up between officers and MIY).
5. The overall findings of the review were that: "Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited. Our overall opinion of the controls within the system at the time of the audit was that they provided Limited Assurance".

Response to the report

6. The Veritau review was timely in that it fell during the period that officers were drawing up proposals for a new contract with MIY. It was therefore possible to reflect the response to the report in the

new arrangements for MIY agreed by Executive in February and May 2021. As a result, the MIY governance regime was revised, in consultation with the company directors, to ensure that it:

- a. Provides appropriate controls for what is a Teckal company
- b. Delineates clear roles and responsibilities
- c. Resolves conflicts of interest
- d. Is commensurate with the scope of the business
- e. Is clear and transparent
- f. Provides certainty to the council on the progress with delivering the agreed business plan and the financial recovery plan
- g. Provides greater clarity on the outcomes of the work undertaken by MIY
- h. Facilitates appropriate scrutiny of the operation of the company
- i. Enables joined up communications to promote the city

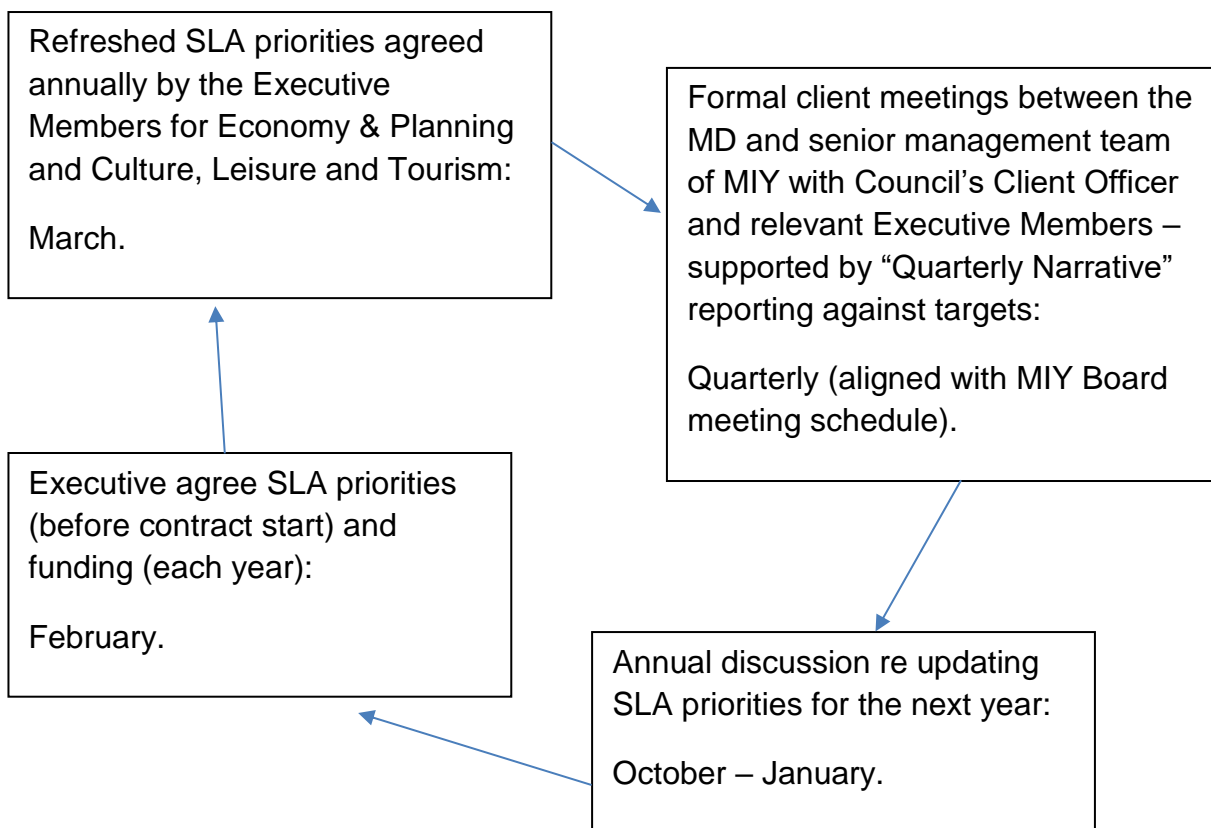
7. Key issues that the revisions addressed were:

- a. A structured approach is now taken to client meetings, placing a focus on the SLA / outcomes and ensuring that the MIY board are kept informed of the business of the client meetings through a quarterly report to the board. Client meetings are informed by a Quarterly Narrative, produced by the Managing Director (MD) of MIY detailing progress against the key deliverables.
- b. The new contract provides mechanisms to ensure robust monitoring of performance against the SLA
- c. Communication and collaboration is improved, with the MD of MIY to attend the council's corporate management team on a regular basis, and regular formal and informal intelligence sharing between CYC and MIY aiding the respective parties in carrying out their functions
- d. In recommending new board members to fill vacancies (of which there are currently three) the board will use skills mapping to ensure an appropriate mix of skills: finance, marketing, events, legal, etc. as well as good sectoral representation
- e. Where a MIY project, plan or initiative gives rise to public accountability considerations requiring a decision to be taken publically through the democratic process, the council will facilitate consideration of the matter through the Executive

decision making process. Relevant reports will frame significant issues at the outset, setting out any consultation proposed together with the decision-making process and endorsing the ultimate decision. The annual business plan will identify which areas of work will require this level of decision-making and any adjustments to that plan will be agreed through the regular client meetings.

Reporting

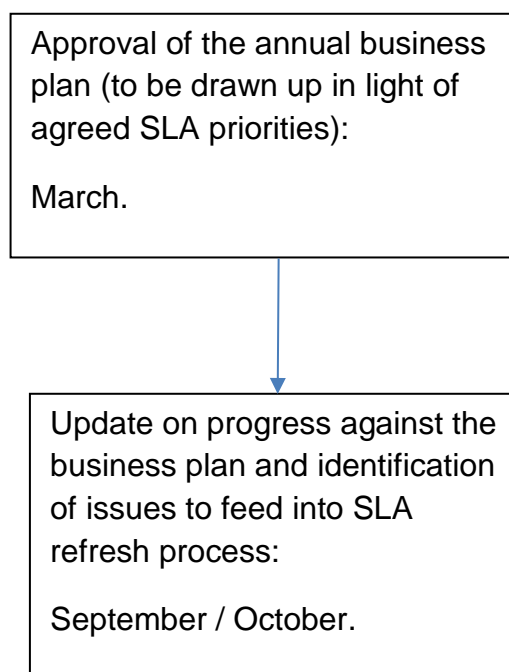
8. Reporting and review now takes place through the council's executive function, facilitated by the client function. The review process works as follows:



9. The Shareholder Committee represents the council's interest as sole shareholder of MIY. Its role is to:
- Act as owners of the company
 - Sign off the business plan
 - Monitor performance and financial delivery against the business plan
 - Exercise decision-making over reserved matters

- Determine the remuneration of directors and any senior managers as identified in the specific scheme of delegation and agree any performance related bonus payments to staff
- Make recommendations to Executive for any investment in/asset transfers to or lending to companies
- Delegate specific functions to officers of the council to increase commercial flexibility

10. MIY will report to the Shareholder Committee twice a year as follows:



11. This process will also ensure that the contribution of the Shareholder Committee is reflected in the developing SLA and its annual revisions.

Revised documentation

12. **Memorandum and Articles of Association:** The Executive requested that amendments be made to the company's memorandum and articles of association to bring them up to date and to introduce a clause requiring a scheme of delegation which will set out the decisions that can be made by the senior management and other employees of the Company; such scheme to be approved by the council. Revised memorandum and articles of association have now been formally approved by the company directors in accordance with this request and submitted to the council prior to their registration with Companies House.

13. **The Contract:** The new contract between the council and MIY was drawn up to reflect the Executive's requirement to ensure robust mechanisms for monitoring of performance against the SLA with a structured approach to client meetings and improved communication and collaboration. Appropriate clauses included:

- Providing stronger step-in rights for the council in the event of any persistent or material failure by MIY to deliver any part of the service, whereby the council could take over operation of the respective function
- Building into the contract the requirement to provide formal quarterly narrative reports, to hold structured client meetings, to produce an annual business plan and report to the Shareholder Committee as well as to brief other council bodies as required
- A requirement for MIY to keep robust and detailed information about its activities

14. The new arrangements have been implemented. It will only be once a new MD is in place that the benefits of the new regime can be fully realised but; nonetheless the Chair of the board has stepped in to play the role of the Chief Executive within the client monitoring process in order to ensure that the new arrangements are effective.

Risk Management

15. There are no specific risk issues arising from this report.

Implications

16. There are no additional legal, HR, equalities, crime and disorder, information technology, property or other implications arising from this report.

Author:

Charlie Croft
Assistant Director
Customer and
Communities

Chief Officer responsible for the report:

Pauline Stuchfield
Director (Customer and Communities)

Report ✓ **Date** 16/09/2021
Approved

Wards Affected: All

For further information please contact the author of the report

Audit & Governance Committee – draft work plan

Training/briefing events will be held at appropriate points in the year to support members in their role on the Committee.

Theme	Item	Lead officers	Scope
29th Sept 2021			
Governance	Progress against the Action Plan	<u>CYC</u> Janie Berry	
Governance	Public Interest Report – Exit Strategy: Guidance on the use of settlement agreements including special severance payments	<u>CYC</u> Janie Berry	
Other	MIY Contract Management	<u>CYC</u> Charlie Croft	
20th Oct 2021			
Governance	Progress against the Action Plan	<u>CYC</u> Janie Berry	
Governance	Corporate Governance Report	<u>CYC</u> Lorraine Lunt	To provide Members with an update on current information governance issues.
Governance	Review of the Constitution	<u>CYC</u> Janie Berry	
Risk	Key Corporate Risks monitor 2	<u>CYC</u> Sarah Kirby	Update on Key Corporate Risks (KCRs) including: KCR 12
External Audit	Mazars Annual Audit Letter	<u>Mazars</u> Mark Kirkham	Report from the Councils external auditors setting out the findings of the 2020/21 Audit.
Veritau (internal audit / counter fraud)	Internal Audit & Fraud Plan & Progress report	<u>Veritau</u> Max Thomas/ Richard Smith	An update on progress made in delivering the internal audit work plan for 2021/22 and on current counter fraud activity. Including reporting on progress made by council departments in implementing actions agreed as part of internal audit work
16th Nov 2021			
Governance	Review of the Constitution	<u>CYC</u>	

		Janie Berry	
1st Dec 2021			
Risk	Key Corporate Risks monitor 3	<u>CYC</u> Sarah Kirby	Update on Key Corporate Risks (KCRs) including: KCR 13
External Audit	Mazars Audit Progress (if required)	<u>Mazars</u> Mark Kirkham	Update report from external auditors detailing progress in delivering their responsibilities as the Council's external auditors
Finance	Treasury Management Mid-year review 20/21 and review of prudential indicators	<u>CYC</u> Debbie Mitchell	To provide an update on treasury management activity for the first six months of 2020/21
Finance	Final Statement of Accounts incl. Annual Governance Statement	<u>CYC</u> Emma Audrain/ Debbie Mitchell	To present the final audited Statement of Accounts following the 2020/21 Audit including the Annual Governance Statement
Governance	Monitoring Officer's update	<u>CYC</u> Janie Berry	
Governance	Corporate Governance Report	<u>CYC</u> Lorraine Lunt	To provide Members with an update on current information governance issues.
Governance	Progress against the Action Plan	<u>CYC</u> Janie Berry	
Veritau (internal audit / counter fraud)	Internal Audit & Fraud Plan & Progress report	<u>Veritau</u> Max Thomas/ Richard Smith	An update on progress made in delivering the internal audit work plan for 2021/22 and on current counter fraud activity. Including reporting on progress made by council departments in implementing actions agreed as part of internal audit work
2nd Feb 2022			
Governance	Progress against the Action Plan	<u>CYC</u> Janie Berry	
Veritau (internal audit / counter fraud)	Audit & Counter Fraud Plan & Consultation	<u>Veritau</u> Max Thomas/ Richard Smith	Consultation with the committee on its priorities for internal audit and counter fraud work for 2022/23
Veritau (counter fraud)	Counter Fraud Framework	<u>Veritau</u> – Max Thomas/ Richard Smith	An update to the committee on counter fraud arrangements and action taken as part of the counter fraud strategy. To include a review of the fraud risk assessment and any updates to the counter fraud strategy and policy.
9th March 2022			

Governance	Progress against the Action Plan	<u>CYC</u> Janie Berry	
6th April 2022			
Risk	Key Corporate Risks monitor 4	<u>CYC</u> Sarah Kirby	Update on Key Corporate Risks (KCRs)
External Audit	Mazars Audit Progress (if required)	<u>Mazars</u> Mark Kirkham	Update report from external auditors detailing progress in delivering their responsibilities as the Council's external auditors
Governance	Progress against the Action Plan	<u>CYC</u> Janie Berry	
HR	Governance Update from Head of HR on CYC settlement agreements	<u>CYC</u> Trudy Forster	
Veritau (internal audit / counter fraud)	Internal Audit & Fraud Plan & Progress report	<u>Veritau</u> <u>Max Thomas/</u> <u>Richard Smith</u>	An update on progress made in delivering the internal audit work plan for 2021/22 and on current counter fraud activity. Including reporting on progress made by council departments in implementing actions agreed as part of internal audit work
Veritau (internal audit / counter fraud)	Internal audit and counter fraud plans 2022/23	<u>Veritau</u> <u>Max Thomas/</u> <u>Richard Smith</u>	To present internal audit and counter fraud plans for 2022/23 to the committee for approval.

TBC

External Audit	Mazars Audit Completion Report	<u>Mazars</u> Mark Kirkham	Report from the Councils external auditors setting out the findings of the 2020/21 Audit.
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