
Staffing Matters and Urgency Committee

7th February 2011

Report of the Chief Executive

Chief Officers Pay Review

Summary

1. This report, requested by Staffing Matters and Urgency Committee on the 20th December 2010, sets out the financial and non-financial implications of seeking to reduce Assistant Director pay from the current grade of Chief Officer Group 10 to the top point of Chief Officer Group 9.

Background

2. In 2004 a formal review of Assistant Director pay was undertaken and all Assistant Director roles were subject to job evaluation using the Hay scheme.
3. On 26th July 2005 the Executive considered a report recommending an evaluation-based approach be adopted using the Hay job evaluation scheme. The Executive's subsequent recommendation to the Personnel Committee was that there be a rationalisation of the previous grades into the three Assistant Director grades. The Personnel Committee accepted this recommendation on 6th September 2005 and the new grades were implemented retrospectively from 1st July 2005. In total there were 25 Assistant Director posts - five at grade 10, fourteen at grade 9 and six at grade 8.
4. The Director of Resources undertook a review of Assistant Director pay in August 2007. At the time there were 23 Assistant Director roles due to DMT reorganisations and restructures - 5 at grade 10, sixteen at grade 9 and two at grade 8. The report concluded that 5 roles had changed significantly since the original evaluation exercise and required re-evaluation. The report also concluded that the grade 10 roles were paid between 1% and 2% below market rate with the remaining roles being about 5% below market rate.
5. No action was taken in respect of pay scales at this time although a re-evaluation of the roles resulted in a redistribution of the of 23 posts across the grades as follows – five at grade 10, eighteen at grade 9 and none at grade 8. Around about this time one Assistant Director role in the 9 grade also became vacant and was subsequently deleted, leaving a total of 22.
6. On 6th July 2010 the Executive approved a restructuring of Assistant Director roles as part of the More for York Organisation Review, reducing the number of

roles from 21 to 16 in November 2010, further reducing to 15 in April 2012. In the report it was stated:

“58. Members are asked to note that the new Assistant Director posts will require grading through the Council’s agreed grading structure, this is to be delegated to the Head of Paid Service.”

7. The Hay Group, using their evaluation scheme, subsequently undertook the evaluation of the new roles. The evaluation of the new roles showed that all roles fell within the Chief Officer Group 10 grade.

8. On the 18th August a decision (posted on the 20th August) was made by the Head of Paid Service, the Chief Executive, as follows:

“The second phase of the Organisation Review, reviewing the Assistant Director level of the organisation, was approved by Executive on the 6th July 2010. The agreed structure reduced the number of Assistant Director roles from 21 to 16, a reduction of 28%. The Executive provided the Chief Executive as Head of Paid Service with the authority to grade the new posts through the Council’s established job evaluation based grading structure..... The evaluation of the new roles shows that all of the new roles fall within the Chief Officer Group 10 grade. The organisation review will still produce savings of £1.6m as planned.”

9. No changes were made to the Assistant Director pay structure itself, rather the evaluation outcomes of the new roles were been actioned against the existing grading structure. This was a logical conclusion given the combining of 21 Assistant Director portfolios into 16, a 23% reduction, and the associated substantial increase in size of the new portfolios.

10. In making this decision, the Chief Executive took note of the evaluation outcomes determining that all of the new roles were the same ‘size’. The decision was also informed by market data supplied by the Hay Group which The market data analysis showed that City of York Council’s Assistant Director pay in grade 10 is based around national public sector lower quartile.

11. The current grading structure is as follows:

Chief Officer Group 8 - £55,993 - £60,188

- £55,993;
- £57,262;
- £58,719;
- £60,188.

Chief Officer Group 9 - £60,188 - £66,068

- £60,188;
- £62,112;
- £64,012;

- £66,068.

Chief Officer Group 10 - £66,068 - £73,401

- £66,068;
- £68,413;
- £70,752;
- £73,401.

12. The above pay rates have not changed since April 2008 as no cost of living pay awards have been made for this staff group since that time.
13. Incremental progression is awarded on a time served basis. At present the following number of Assistant Directors are on the following incremental levels:
 - £66,068 – 11;
 - £68,413 – 0;
 - £70,752 – 2;
 - £73,401 – 3.

Setting Pay Policy

14. In setting a pay policy, the organisation needs to take into account several factors:
 - the market pay data and the competitiveness of the recruitment market;
 - the relativity of the salary levels to each other;
 - differentials between salaries of manager's and direct reports;
 - affordability;
 - the need to retain key staff and the costs associated with recruiting replacements should any staff leave.
15. At the current time the general context of public pay also needs to be taken into account, namely:
 - the current political climate around public sector pay, particularly that of senior officers;
 - the economic and market climate;
 - that Assistant Director salaries have not increased since 2008;
 - equity and fairness and the consistency of treatment with other staff groups;
 - other increases in the cost of living, for instance VAT has increased, there will be a rise in employee national insurance contributions of 1% in April 2011 and an anticipated rise in employee pension contributions around the same time, all affecting disposable income;
 - timing with the CSR leading to increased redundancies;

- employee relations issues and the reaction of trade unions to any proposals.
16. In addition, Members will be aware that the coalition Government has commissioned Will Hutton to analyse whether a 20 to 1 pay multiple might be justified as promoting fairness in public sector pay over and to what extent it might contribute to changed social norms about pay in the private sector.
 17. On 1 December 2010, the Fair Pay Review published its Interim Report. The report reached no final conclusions rather it explored the role of a maximum pay multiple in containing pay dispersion, and offered the view that the appropriate level for a maximum pay multiple (20 to 1 or otherwise) would depend upon how the multiple is designed. The interim report discussed a range of different design options, which will be developed further to produce detailed recommendations for the Fair Pay Review's final report due early in 2011.
 18. The interim report concluded that the public sector must create value for citizens by attracting and retaining talented individuals, otherwise it will become a second class sector of the economy, but also must be vigilant about ensuring value for money. In this context the interim report laid down some fair pay principles which will be used to underpin a framework for fairness in senior remuneration, as follows:
 - real proportionality between pay and individual contribution – individuals should be rewarded for their own performance, with top executives prevented from scooping the pool;
 - fair process – pay should be set according to consistent rules applied equally to all, independent decision-making and opportunities for staff to make their case;
 - transparency – pay outcomes should be openly disclosed and justified to staff and the public.
 19. The final report, due in March 2011, will produce final recommendations around all of the issues discussed in the interim report, although there is no reason why the Council can not be cognisant of the above issues at this point in time.
 20. While it remains to be seen if a 20:1 pay multiple is recommended in the final report, the current pay multiples of Assistant Directors based on Chief Officer Group 10 is:
 - Bottom of scale: 5.5:1;
 - Top of scale: 6.1:1.

Options

21. Staffing Matters and Urgency Committee asked for this report to contain one option, the option to reduce Assistant Director pay from the current grade of Chief Officer Group 10 to the top point of Chief Officer Group 9.

Analysis

22. Whilst some of the current Assistant Director roles are either unique in their make up or at least very rare due to the grouping of services in portfolios, it is possible to use job evaluation outcomes to undertake an analysis of the market position of the roles. The market analysis is undertaken by using job evaluation results to compare jobs of the same size, scope and level of responsibility, thus allowing different roles to be fairly and accurately compared in the market. The reliability of such analysis is also heavily dependant on the definition of the 'market' and other factors such as fluctuating demand for specific skills and roles and regional factors. In this case the market analysis below was undertaken by the Hay Group who are recognised as being the industry leader in this area. The Hay Group methodology is used by over 125 Local Authorities and their public sector database consists of remuneration data from over 200 public sector organisations, and as such can be considered to have a very high degree of reliability.
23. An analysis of the Council's current Assistant Director pay rates has been undertaken and the market data shows that the current pay structure does not appear to be aligned to the market as there are significant differences between the current minimum and maximum salaries and those salaries paid to roles of the equivalent job size. Only Chief Officer grade 10 is aligned to the market, albeit lower quartile, as follows:

	Upper Quartile	Median	Lower Quartile
Adult Provision and Transformation	84,700	77,700	70,600
Environment			
Housing and Public Protection			
Children's Specialist Services	81,500	74,100	67,000
Adult Assessment and Safeguarding			
Strategic Lead for School Planning and Organisation			
Education			
Communities and Culture			
Planning and Sustainable Development			
Strategic Planning and Transport			
Economy and Asset Management			
Customers and People	78,800	71,000	64,000
Policy, Performance and Partnerships			
Integrated Commissioning			
Legal and Governance	78,800	71,000	64,000
Financial Services			

24. Taking into account the market analysis above, it is clear that the Council's salaries are not generous, being either lower quartile or below the market rate. To reduce salaries would therefore place the Council at risk of not being able to recruit or retain high performing employees in critical roles.
25. In considering future options, it is important to take a long term and considered approach. Organisations which take a short term approach, that is to say they make quick fixes rather than address the fundamentals of pay and reward, inevitably face a number of issues sooner or later. Short term approaches tend to result in mis-alignment of pay levels and further issues before too long, often costing more in the long term and being disruptive organisationally.
26. Clearly the Council is able to set its pay rates at whatever is considered appropriate and could therefore change current rates of pay, subject to the implementation issues considered below. This wide ranging discretion however is fettered by the need to recruit and retain highly motivated and high performing staff and the direct costs and service issues associated with not being able to do so.
27. When reviewing pay levels it is also important to consider wider issues, such as organisational context and the level of other elements of the pay and reward package.
28. In this regard York has very attractive environmental factors and enjoys an excellent national and regional reputation for innovation and service delivery, which the Council already relies upon. These factors allow York to maintain salary levels which are lower quartile and still compete in the employment market, attracting high calibre candidates, but it does also mean that Assistant Directors, once recruited are highly coveted by other organisations and can easily move on to higher paid roles elsewhere.
29. In this regard, turnover levels within the Assistant Director cohort as follows:

Year	Number of Assistant Directors leaving
2005/06	1
2006/07	2
2007/08	4
2008/09	3
2009/10	2
Total	12

30. Whilst the number of Assistant Director posts has varied during the above time period, the above represents an annual turn over of around 11%. In

comparison, turnover for all staff groups for 2008/09 was 14% and in 2009/10 it was 11%.

31. Assistant Director posts cost the Council in the region of £15k - £20k per appointment. The above figures therefore represent recruitment costs of between £180k and £240k, plus Officer and Member time in addition to the associated service disruption. Reducing salaries to below the market rate would likely further increase turnover with an associated financial and service impact.
32. Whilst the current economic climate has affected the public sector jobs market to an extent, many organisations are reshaping their senior management teams, which is creating opportunities in the market for talented people. The impact of the current climate therefore should not be overstated when considering turnover rates and its impact on retention.
33. In terms of the total pay and reward package, York is not generous on non-pay items, applying the minimum national terms and conditions with the exception of annual leave provisions. In this regard the statutory minimum is 28 days per annum, inclusive of 8 bank holidays and the minimum level under the national terms and conditions is 30 days exclusive of bank holidays. York's current annual leave provisions for Chief Officers is 34 days per annum rising to 39 per annum exclusive of bank holidays. By comparison the average in the region is around 34 days per annum exclusive of bank holidays and other staff groups receive 24 days rising to 29 days, exclusive of bank holidays. In addition Chief Officers receive a telephone allowances of £108.48 per annum.

Consultation

34. This matter has been the subject of some high level discussion with UNISON and the GMB, but has yet to be the subject of formal consultation or negotiation. A discussion has also been held with the Assistant Directors themselves, but again that did not constitute formal consultation or negotiation.
35. Feedback from these sounding sessions indicate that the trade unions would be highly unlikely to agree to a collective agreement to reduce Assistant Directors pay. Feelings are also strong within the staff group itself, particularly as the Assistant Directors have all seen a considerable expansion of their roles as part of the organisation review's reduction of posts from 21 to 16, with a further reduction to 15 taking place in April 2012, with the resulting evaluation outcomes being implemented using the agreed grading structure.
36. Given the above, if Staffing Matters and Urgency Committee take a decision to seek to reduce Assistant Director pay, that decision could only be in principle and subject to the outcome of consultation and negotiation with the affected staff group and their representatives, with a final decision being required after that process has been completed.

Implementation Mechanism

37. Matters of pay and grading are express contractual terms. As such they can not be unilaterally varied and can only be amended by agreement, either through a collective agreement with the relevant trade unions (UNISON and the GMB) or by agreement with the individuals themselves.
38. As it is not legally possible to unilaterally vary an express contractual term, such variations can only be consensual. Variations can be in the form of a collective agreement or an individual variation to contract. If however the Council and its employees cannot agree a variation of contract, and the Council still believes it is necessary for the organisation to enact a change, the Council can, if no other route proves successful, terminate the whole contract and offer employment on the revised terms. However, this should be a 'last resort' approach.
39. If Staffing Matters and Urgency Committee decides to seek to reduce Assistant Director pay, the Chief Executive, as Head of Paid Service, would need to undertake consultation and negotiation with the relevant trade unions (UNISON and GMB) with a view to reaching a collective agreement to vary the Assistant Director's contracts of employment.
40. It is highly unlikely that such agreement could be reached, in which case, the next step would be for the Council to write to each individual seeking their agreement to vary their contract. If the variation can not be agreed the subsequent step would be for the employees to be advised that the Council is considering terminating the whole contract and offering employment on the revised terms.
41. If agreement still cannot be reached and it is decided that the variation is necessary, the employee will be given notice to terminate their contract and informed that as from the date on which the notice expires, they will be dismissed, but may be instantly re-employed on new terms and conditions. It is then up to the employee whether or not they accept the new terms. The letter giving notice to terminate their contract will give the employee the legal reason for their dismissal and offer them instant re-engagement on the new terms and conditions, which in this case will all be identical to their current terms, other than their pay level. The notice period required is a maximum of twelve weeks.
42. An *indicative* timetable of the above process could be expected to be:

Phase	Indicative duration
Consultation and negotiation phase	4 to 6 weeks (minimum)
Decision by Staffing Matters and Urgency Committee to proceed in the absence of a Collective Agreement	4 weeks
Letter to all Assistant Directors seeking their individual consent to the change	2 weeks
Reminder letter	2 weeks
Decision by Staffing Matters and Urgency Committee	4 weeks

to dismiss and offer reengagement	
Letters issued	2 week
Notice period	12 weeks

43. If the Council proposes dismissal then:
- it must ensure that every aspect of consultation and negotiation is undertaken in a meaningful way and must cut no corners;
 - it must genuinely seek to reach agreement on the changes it proposes to introduce and to avoid dismissing individuals;
 - it should invite ACAS assistance at an early stage;
 - it should aim to get as much agreement as possible and not dismiss those who agree to the changes;
 - it must set out its case first to the unions and, if opposition continues, then to the affected individuals directly, and explain why the proposed changes are necessary;
 - it must explain and consult upon the consequences of failure to agree on the changes;
 - it must dismiss as a last resort.
44. There is a legal obligation for the Council to negotiate with the union and not simply to consult. The Council would not comply with the relevant legislation if, before it meets with the union, it has already decided that there will be dismissals and the negotiation process must be substantially complete before letters of dismissal are issued.
45. If the employee will not accept a variation of contract and is ultimately dismissed, the Council would need to demonstrate that it has acted in accordance with the procedure to ensure the dismissal was legally fair. In this regard it is the reasonableness of management's actions which count, which will be assessed against the justification for the proposals and the reasonableness of management's presentation of these to the employee.
46. Whether such dismissals would be found to be fair would depend on the facts. Ultimately the outcome will depend on issues such as:
- the substantiality of the reason, (this will involve such considerations as the Council's objectives; the financial implications etc.
 - the nature and extent of the consultation with unions and individuals;
 - the alternatives (other than termination) open to the Council.
47. To support any dismissal decision, the Council would need to show that:
- There was a sound, good business, economic or organisational reason for the action;
 - The action followed full, proper and meaningful consultation;

- The reason for the proposed change had been explained to the employee as fully as was reasonable in the circumstances;
 - The employee had been given reasonable time in which to consider a response to the proposal;
 - It had weighed up the financial effect of dismissal and re-engagement on the individuals concerned.
48. When an employee is asked to accept a unilateral variation to their contract, they may do a number of things:
- Accept the change as it is proposed;
 - Try and negotiate some amendments to the change;
 - Continue working under protest;
 - Not to accept the offer of re-employment on the new terms and for the dismissal to take effect;
 - Resign prior to the contract terminating.
49. In addition to the above, the employees who are dismissed may make a claim of unfair dismissal in the Employment Tribunal. This includes employees who accept reengagement.
50. An employer's prospects of successfully resisting an unfair dismissal claim in this context will depend on:
- Whether the employer can show by evidence that there are discernible advantages to the organisation by the introduction of the new terms; this is generally understood to require the employer to show a 'sound, good business reason'.
 - Whether the employer can be said to be acting reasonably in deciding that the advantage to the organisation of implementing the changes outweighs any disadvantage to the employee
51. There are always risks associated with any litigation and the question whether there is a substantial reason for dismissal is a matter for the tribunal to decide. Equally the reasonableness of the dismissal must be justified at the time of the dismissal. The outcome of a successful challenge could be the reinstatement of the of dismissed employees on the original contract terms and an award of compensation. This would be in addition to the costs the Council would incur defending the Employment Tribunal claims.

Industrial Relations Impact

52. Whilst the Council actions as described above may be legal and defensible, the trade unions may decide to resist the Council's actions by taking industrial action, either in the form of a strike or action short of a strike, such as working to rule, overtime bans etc.
53. Given the democratic nature of trade unions it is ultimately the decision of their members if they wish to take industrial action. If the strength of feeling

amongst the staff group was sufficient, a ballot for industrial action would take place.

54. Any industrial action would need to be subject to a full ballot and the Council would be given due notice in accordance with the relevant legislation. This means that any industrial action must commence within 28 days of the closing date of a ballot, unless the trade union reaches an agreement with the Council to delay taking action, in which case it may wait up to eight weeks before commencing action. Notice to take action must be given by the trade union to the Council at least seven days prior to the commencement of the action.
55. The timing of any such ballot and subsequent action, should a mandate be achieved, would be for the trade unions to determine and it could take place at any time, either around the negotiations or after the Council has taken a decision to dismiss and offer reengagement to enact the change.
56. If a mandate for action is achieved through a ballot, the Council has in place a robust method of contingency planning for industrial action that would usually be used to counter any action taken. However that process is lead by Assistant Directors and it is difficult to anticipate the impact of any action until the nature of the action is known. It may also be the case that some kind of industrial action short of a strike is taken, such as a work to rule, go slow or some other form of action, which could be very disruptive and slow down organisational change and implementation of the efficiency programme and budget process outcomes.
57. An additional risk is that employees who are dismissed and offered reengagement won't accept the Council's offer of reengagement, leading to staff shortages at senior management level at a critical time. This would have a similarly disruptive impact to a prolonged period of industrial action and the Council would also incur the direct costs of recruitment and potentially interim staff.

Other Implications

58. In addition to the implications described above of a decision to seek to reduce Assistant Director pay, there are other, less tangible not nonetheless equally real and potentially disruptive implications that need to be considered. The foremost of these implications is the negative impact of any such proposal on the morale and motivation of the staff group concerned, regardless of the ultimate outcome.
59. Assistant Directors have only recently been through a very difficult organisational review which reduced numbers by 23% without an associated reduction in workload. The magnitude of the changes the Council is undertaking is such that it is essential that its senior management team is suitably rewarded for driving and leading transformation. Although work is underway to build an effective and coherent senior management team, even the consideration of a proposal to seek to reduce their pay has had a negative impact on morale and motivation. It is likely that a number of Assistant Directors may already be considering their future employment with the Council

as they are of the view that the consideration of this matter so soon after the organisation review and the increase in size of portfolios to be unreasonable.

Corporate Priorities

60. Reviewing and establishing the councils position in respect of Chief Officer pay is an important element for assessing its ability to maintain an effective senior management team and as such support the corporate priority of Effective Organisation.

Implications

61. This report has the following implications:

Financial

The savings already achieved from the reduction of Assistant Director posts is as follows:

1st Year - Old/21 = £1.714m, New/16 = £1.316m. Variance -£398k

2nd Year - Old/21 = £1.721m, New/16 = £1.354m. Variance -£367k

3rd Year - Old/21 = £1.726m, New/16 = £1.391m. Variance -£335k

4th Year - Old/21 = £1.728m, New/16 = £1.433m. Variance -£295k

The financial implications of all Assistant Directors moving from CO Gp 10 to CO Gp 9 but *excluding pay protection (PP*)* are:

1st Year - COGP9/16 = £1.282m, COGP10/16 = £1.316m. Variance +£34k*

2nd Year - COGP9/16 = £1.287m, COGP10/16 = £1.353m. Variance +£66k*

3rd Year - COGP9/16 = £1.290m, COGP10/16 = £1.391m. Variance +£101k*

4th Year - COGP9/16 = £1.290m, COGP10/16 = £1.433m. Variance +£143k*

* - The Council currently operates a pay protection scheme which would be applicable to any decision to reduce Assistant Director salaries. The scheme provides for 100% in year one with a 5% reduction in the 'old' salary per year until the 'new' and 'old' salaries are the same, which would result in no savings being realised in year 1 with savings accruing over time as pay protection ceased to apply.

- **Human Resources (HR)** – contained in the body of the report.
- **Equalities** – any decision around this matter would need to be subject to the completion of an Equality Impact Assessment prior to the decision being taken.
- **Legal** – contained in the body of the report.

- **Crime and Disorder** – none.
- **Information Technology (IT&T)** – none.
- **Property** – none.
- **Other** – none.

Risk Management

62. The specific risks surrounding the issues contained in this report are highlighted in the analysis of the options. In summary, the risks associated with the recommended option are financial, legal, operational and reputational.

Recommendations

63. Staffing Matters and Urgency Committee are asked to:

- consider the implications of seeking to reduce Assistant Director pay;

Reason: In order to determine if a mandate is provided to the Chief Executive to commence the necessary negotiations.

- confirm, if appropriate, if a revision to the salaries associated with Assistant Director grades i.e. the redefinition of grade boundaries, is being sought, or if a percentage reduction in pay levels.

Reason: In order to clarify any mandate provided to the Chief Executive.

Contact Details

Author:

Chris Tissiman
Head of Strategic Workforce Planning
and Resourcing
Human Resources
Ext 1715

Chief Officer Responsible for the report:

Kersten England
Chief Executive

Report Approved

Date 28th January 2011

Kersten England
Chief Executive

Report Approved

Date 28th January 2011

Specialist Implications Officer(s):

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

All

For further information please contact the author of the report

Background Papers:

Hutton Review of Fair Pay in the public sector: interim report. December 2010,
http://www.hm-treasury.gov.uk/indreview_willhutton_fairpay.htm

Annexes

None