

NORTHUMBERLAND COUNTY COUNCIL

COUNTY COUNCIL

At the meeting of the **County Council** held at Council Chamber - County Hall on Wednesday, 27 July 2022 at 2.00 pm.

PRESENT

B Flux (Chair) (in the Chair)

MEMBERS

C Ball	J Beynon
L Bowman	E Cartie
G Castle	T Cessford
E Chicken	T Clark
A Dale	L Darwin
R Dodd	C Dunbar
L Dunn	P Ezhilchelvan
S Fairless-Aitken	J Foster
L Grimshaw	C Hardy
G Hill	C Horncastle
C Humphrey	I Hunter
Jl Hutchinson	V Jones
J Lang	S Lee
M Mather	K Nisbet
K Parry	W Pattison
M Purvis	G Renner-Thompson
M Richardson	J Riddle
M Robinson	A Scott
C Seymour	A Sharp
E Simpson	G Stewart
M Swinbank	M Swinburn
C Taylor	T Thorne
D Towns	H Waddell
A Wallace	R Wearmouth
R Wilczek	

OFFICERS

Binjal, S.	Monitoring Officer
Denyer, L.	Deputy Monitoring Officer
Furnell, L.	Interim Service Director HR/OD
Greenburgh, M.	Solicitor, Greenburgh and Co
Hadfield, K.	Democratic and Electoral Services Manager
Hunter, P.	Interim Senior Service Director
Murfin, R.	Interim Executive Director of Planning & Local Services

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<p>O'Farrell, R. Taylor, M.</p> <p>Willis, J.</p>	<p>Regeneration, Commercial & Economy Interim Deputy Chief Executive Interim Executive Director Communities and Business Development Interim Executive Director of Finance and S151 Officer</p>
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Around nine members of the press and public were present.

1 APOLOGIES FOR ABSENCE

Apologies were received from Councillors Bawn, Bridgett, Carr, Daley, Dickinson, Ferguson, Gallacher, Jackson, Kennedy, Morphet, Murphy, Oliver, Ploszaj, Reid, Sanderson, A. Watson and J. Watson.

2 DISCLOSURES OF MEMBERS INTERESTS

Councillor Dunn sought assurance that as a member of the Employment Appeals Committee she could take part in item 5 on the agenda. The Monitoring Officer confirmed that this was in order as it was the terms of the settlement agreement which were to be discussed, not the reasons for them.

3 EMPLOYEE RELATIONS RELATING TO CHIEF OFFICERS

The Business Chair invited the Monitoring Officer to provide members with some advice regarding dealing with this matter in public. The Monitoring Officer advised that there always had to be a presumption in favour of openness and transparency unless there was a good reason to make a report exempt. When the report had been prepared it had been expected that some matters would be exempt as they related to an individual. This had to be weighed against the public interest in dealing with matters in public, and in this case, there was an overwhelming desire to hear this matter in public. This was because there had been enquiries about holding proceedings in the open, and following the S114 report and the Caller review, there was a strong and legitimate public interest for members and residents to know why this was being proposed, and why it demonstrated best value. Her advice was therefore that this was dealt with in public, though the needs of the individual still had to be balanced. She had taken counsel's advice and his view was that it was legitimate to have these proceedings in public. However, members would not be able to talk about sensitive personal details and she asked members not to stray into this area. As members would all be aware of who this was about, she asked them to be respectful in their comments.

Councillor Towns asked if this proceeded in public, would members be able to refer to any relevant matters to be considered by the Employment Appeals Committee (EAC) due to take place after Council, and if so, in what level of detail. The Monitoring Officer advised that she would guide the Chair if members strayed into matters which she felt may pre-determine any other course of action. If members decided not to accept the recommendation from the Staff and Appointments Committee regarding the settlement agreement, then the course of action would be through the EAC.

The Business Chair then proposed that agenda item 5 be dealt with in public due to the matter relating to the most senior member of staff and involving a

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significant cost to the public purse. He believed it was in the public interest to do this. This was seconded by Councillor Hill, and members agreed this approach. He then advised if members that if they did stray into sensitive personal matters, then he would turn the microphones off in the Chamber.

He asked all members to check that they had the appendices to the main report which had been emailed to them this morning. Copies had been circulated in the Chamber and Councillor Wearmouth proposed a 30 minute adjournment to allow members sufficient time to read the documents, which was seconded by Councillor Simpson. The Business Chair adjourned the meeting at 3.10 pm, and it reconvened at 3.45 pm.

The report was then presented by Councillor Wearmouth as vice chair of the Staff and Appointments Committee. He detailed the background to the current position and thanked the members and officers who had travelled to York for the meeting. He welcomed the matter being dealt with in public and advised that all the relevant papers would be posted to the Council's website. He proposed the recommendations from the Staff and Appointments Committee, which was seconded by Councillor Simpson.

Mr Greenburgh then addressed members and provided a full overview of the options and reasons in the report and the appendices, including QC opinion. Mrs Willis then reminded members about best value and that it was not just about doing things as cheaply as possible. Whilst the economy element of best value was important, equal value also had to be applied to efficiency and effectiveness, as well as to consideration of the public interest. The settlement had a cash value of £209,000 but there was also a non-cash value to the severance payment of £100,000 which represented a write off of a proportion of the international allowance. The write down value of £100,000 was not the same as the economic value, as there would be substantial litigation costs to recover the full sum and uncertain prospects of the Council being able to actually recover the full sum, as well a potential exposure to costs if the claim was unsuccessful. Weighing all of the different factors, the economic value of £179,000 which had been paid in allowance was therefore substantially less. Her view was that the proposal to recover those elements of the allowance that officers could achieve via adjustments to contributions for pension tax and national insurance would be in the Council's best interests, rather than trying to pursue recovery of the full sum. Mr Greenburgh had detailed the alternative courses of action as set out in the report and it was the view of all officers that there was no prospect of the Chief Executive leaving the organisation at lower cost, so if members were not minded to accept the recommended settlement, then officers would have to revert to one of the alternative courses of action. All of these carried substantial financial risk for the Council.

The Business Chair then invited members to ask questions.

- Councillor Hill asked whether any other complaints were tied into the settlement and was there any obligation not to speak about these matters.
- Councillor Towns asked for clarity about the £40,000 on account of injury or disability and what this was.

Mr Greenburgh replied that the objective was to draw a line under all complaints which included grievances, whistleblowing, conduct complaints, allegations against officers and any other forms of enquiry. The wider work of the Audit Committee would continue but the role of the Chief Executive in that would be excluded. It was important that there was finality so the Council could move on so the agreement did include settlement of all issues between the parties. A non-disclosure agreement would not be in the Council's interests and he didn't intend

to include one within the formal agreement. There was provision within the Income Tax Act to allow payment to be made by an employer on account of injury or disability in certain circumstances. The medical evidence available supported that in this case.

- Councillor Castle asked if the Council agreed the settlement whether this would preclude any individual member from taking civil action of their own.
- Councillor Wearmouth commented that it would be helpful to clarify the position regarding any criminal conduct.
- Councillor Dale asked for clarification regarding the timescale for any tribunal.

Mr Greenburgh replied that the contract only bound those parties who were signatories to it so it wouldn't preclude any individual member taking action. He was not aware of any conduct which would give rise to criminal prosecution and criminal matters would not be contained in an employment agreement. Regarding timescales, tribunals were not speedy jurisdictions and there was currently a significant backlog. This case was currently listed for mid-2023 for five weeks and if there were subsequent claims brought associated with it this would also impact on that. Civil court would probably take a year with a week for the hearing.

The Business Chair then invited members to debate.

- Councillor Hill commented that this conflict had been ongoing for two years which had drawn in more people as it progressed and become more bitter and divisive. This showed the importance of nipping things in the bud early. She appreciated how much work had been done on the settlement but did not feel this would resolve the issues because they had become so entrenched. She felt both sides would feel they had been denied justice and that parts of the agreement felt unethical, and therefore would not be supporting it. She agreed matters needed to be moved on, but not in this way.
- Councillor Cessford understood the principles of best value and the need to move on, but this was about the pay off of someone who was alleged to have taken part in unlawful activities. What would residents think of this and what would happen to them if they had taken part in unlawful activity? He made reference to comments which had been made when Councillor Jackson had been removed as Leader. He understood why people had behaved as they had done in the past but in light of the Caller report, members could not now plead ignorance. If members were going to support payment to someone accused of unlawful activities then they should be prepared to justify this to their residents. He asked why members would believe that an offer of £209,000 would be accepted when, as had been reported, an offer of £1.1m had been turned down? He would be asking for a named vote on this so members would be able to justify how they had voted on an offer to someone alleged to have taken part in unlawful activities.
- At this point the Monitoring Officer reminded members that the Chief Executive had not been accused of unlawful activities.
- Councillor Towns thanked the Leader and the team of members and officers who had gone to York recently. As a lawyer himself, if he was advising the Council he would agree with the good advice which had been given already to members. However, in this case members were the client, and he did not want to support what was on the table as there were clear lines of enquiry which he felt were worth pursuing. There was a public interest in pursuing misconduct and it would be contrary to the public

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interest to reward misconduct or failure. The Caller report showed a clear conclusion of certain actions. He agreed with a lot of the proposed heads of terms as they covered contractual entitlements and the proposed costs as that was part of the compromise, but he did not agree with paying £75,000 for injury to feelings which was the maximum amount payable. He did not know what these injuries were, nor did he know what £40,000 for injury and disability related to. There was also potential for another £50,000 depending on whether the Chief Executive was able to retire on the grounds of ill health. There was a cost of living crisis and council tax had been raised again. He could not support awarding £115,000 to someone for injury to feelings when there were other avenues to pursue.

- Councillor Hutchinson commented that the figures meant he would be voting with his head and not his heart.
- Councillor Dodd reflected on the advice that the figures could be a lot higher if members did not agree to what was in front of them. This was a clear steer to members to guide them to the best result for the tax payers of the County. He felt that if someone really wanted to dig into this they would find something and it would not be pleasant for anyone. He urged members to accept the recommendation so the Council could move on.
- Councillor Hunter felt this was the best of the worst situation and the Council needed to move forward and get back to day to day business.
- Councillor Dale commented on the significant costs associated with employment tribunals and the reputational damage which could result. The Council would not be able to progress with the Caller report. She understood that not everyone would support the settlement agreement but the Audit Committee would be investigating a lot of the activities. She felt this was the best settlement which could be achieved for the Authority in the circumstances and did represent best value, and she urged members to move forward.
- Councillor Simpson commented that the deal with had been reached was the best for the Council and the Chief Executive and she hoped everyone would now work together to make this a better Council.
- Councillor Beynon agreed that having heard from the officers, the way forward they had outlined would be the best course of action, but morally it was wrong. The Council had been run through intimidation, fear and bullying. Many staff had told him how they feared for their jobs if they had argued about issues. Good officers had been lost and their reputations damaged and there had to be some investigation of that. Accepting the settlement meant fellow councillors would not be given the chance to clear their names, and he could not support it.
- Councillor Swinburn thanked the Monitoring Officer for reminding members that this was not about wrongdoing, but about the terms of a settlement agreement which had been reached by both parties. He also thanked Mr Greenburgh for spelling out the options so clearly and the members who had attended the meeting last week. He reminded members that the amount being discussed was considerably less than that received by the previous Chief Executive when he had left five years ago. Nor had there been any discussion about ongoing issues at the time such as Arch. The discussion today had been less about the financial details and more about members having their pound of flesh, and he added that some members had also been subjected to bullying. Allowing this matter to proceed would subject the Council to increasing costs which would have to be met from

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the public purse. The Caller report had identified that this matter needed to be brought to a close. Senior officers were unable to focus on day to day business with members because of this.

- Councillor Grimshaw agreed with these comments. Residents deserved better now and until this was sorted, the Council wasn't going to function properly. She accepted the comments which had been made regarding the cost but felt that this represented the best solution for all.
- Regarding some of the comments which had been made, Councillor Horncastle remarked that Councillor Jackson had been elected as Leader by members, and removed by those same members. The Chief Executive had a contract of employment, which was a completely different situation. He suggested that those who weren't supportive of the agreement should listen to the advice being provided by the Council's professional advisers, or provide an alternative option for members to consider.
- Councillor Ezhilchelvan acknowledged the different perspectives which were being raised in the Chamber and commented that the role of members was to dispense public money in the most effective way. Members were being asked to decide if this deal represented the best value for money and as outlined by Mr Greenburgh, all other alternatives would cost more. He therefore supported it on all counts.

Councillor Wearmouth then summed up. He found agreeing to the recommendations very challenging as there were both moral and value elements to consider. The Chief Executive had overseen the unlawful operation of a business within the Council and for that she had received a significant sum of money. Mr Caller had highlighted the lengths which had been gone to, to prevent or delay processes and to prevent member action. There were a number of issues raised in the Caller report which merited further investigation and which would go through the proper channels. The recommendations would bring an end to any disciplinary action.

At this point, following repeated disruption from a member of the public who would not leave the Chamber when requested to by the Business Chair, the meeting was adjourned at 4.05 pm and reconvened at 4.15 pm.

Councillor Wearmouth continued that he was aware that some members felt that no money should be paid until disciplinary processes had been explored. However, there were issues around the time it would take, the cost, the impact on officers and services and the ambitions of the Council. Members and officers needed to get on with the proper business of the Council including delivering affordable homes, jobs and education. Financially dealing with this issue had cost a lot of money and not adopting the recommendations would increase that cost significantly. He did not agree that taxpayers money should be spent in continued legal wranglings with disgruntled ex-employees. The ability of officers to function in their jobs was being adversely affected and he regretted that good officers had left the Authority because of the situation. Today members had the opportunity to finally move things on and the recommended course of action would provide the reset which was badly needed. He understood the reluctance of some members, but asked for their support in the current circumstances.

On the required number of members supporting a named vote on the motion the votes were cast as follows:-

FOR: 38 as follows:-

Ball, C.	Parry, K.
Bowman, L.	Pattison, W.

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Castle, G.	Purvis, M.
Chicken, E.	Renner Thompson, G.
Clark, T.	Richardson, M.
Dale, A.	Riddle, J.
Darwin, L.	Robinson, M.
Dodd, R.R.	Scott, A.
Dunbar, C.	Seymour, C.
Ezhilchelvan, P.	Sharp, A.
Flux, B.	Simpson, E.
Grimshaw, L.	Stewart, G.
Hardy, C.	Swinbank, M.
Horncastle, C.W.	Swinburn, M.
Hunter, E.I.	Thorne, T.N.
Hutchinson, J.I.	Waddell, H.
Jones, V.	Wallace, A.
Mather, M.	Wearmouth, R.
Nisbet, K.	Wilczek, R.

AGAINST: 7 as follows:-

Beynon, J.	Lee, S.
Cessford, T.	Taylor, C.
Hill, G.	Towns, D.
Humphrey, C.	

ABSTENTIONS: 4 as follows:-

Cartie, E.	Fairless-Aitken, S.
Dunn, L.	Foster, J.

It was therefore **RESOLVED** that:-

- (a) Council note the Heads of Terms negotiated with the Chief Executive and her representatives to terminate her employment on 31st July 2022 and to settle all outstanding disputes as between the County Council, its members and officers and the Chief Executive, including the withdrawal of any and all complaints that any of the parties have against each other; and
- (b) Council agree the terms of the settlement as set out in the Heads of Terms at Appendix 1 to the report, as recommended by the Staff and Appointments Committee.

At this point, Mr O'Farrell left the Chamber.

4 **INTERIM ARRANGEMENTS FOR THE APPOINTMENT OF THE HEAD OF PAID SERVICE**

Council was asked to receive and consider the report and the recommendations of the Staff and Appointments Committee in respect of the appointment of an Interim Head of Paid Service and Chief Executive.

The Staff and Appointments Committee had met that morning and Councillor Wearmouth confirmed the Committee's resolution and recommendation that Council appoint Rick O'Farrell as the Interim Head of Paid Service and Chief Executive on a temporary basis effective from 1st August 2022. The Leader had confirmed that there were no objections to the proposal from Cabinet. Mrs Furnell confirmed that the Staff and Appointments Committee had been satisfied that Mr O'Farrell met the requirements of the role and the salary had

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been recommended as £195,000 following consideration of benchmarking information.

Councillor Wearmouth moved the report's recommendations, with the salary set at £195,000. The Staff and Appointments Committee would consider a job description, salary, and conditions for the permanent appointment in due course. This was seconded by Councillor Stewart.

Councillor Swinburn asked whether the new staff structure review would be carried out by the Interim Chief Executive or the substantive appointment. He also asked how long the interim would be in post for, would the substantive post be externally advertised and recruited to via a fair procedure, and who did the interim Chief Executive report to as their line manager?

Councillor Cartie asked for an approximate timeframe for a permanent appointment and hoped the post would be advertised externally.

Councillor Ball asked whether the proposed salary included any bonuses or enhancements and was concerned that the Executive Team would be assembled and then have to be changed at a later date.

Councillor Wearmouth responded that matters would be progressed as swiftly as practical and would be brought to Council, probably in September. The Chief Executive would report to Staff and Appointments Committee and members would determine the structure and appoint to the Executive Team ultimately. Staff within the organisation would be able to apply for the new roles and there would be the opportunity for external appointments as well.

Mrs Furnell confirmed that the process would be external for all of the senior appointments which were currently vacant. There were no additional bonuses for the temporary chief executive appointment and Mr O'Farrell would have the same terms and conditions as all other NCC staff.

Councillor Horncastle hoped that if Council approved this, it would be the start of getting things right and getting permanent appointments made. He felt it must be very difficult for officers to not be in a permanent role when they had put so much effort into the work of the Council.

Councillor Mather felt there was a need to look at the entire Council staffing structure as there were problems with recruitment across the board because of pay levels. £195,000 was a significant salary and staff at the lower end of the pay scale needed to be remunerated properly for the valuable work they did.

Councillor Cartie commented that this needed to be a member led organisation going forward.

Councillor Wearmouth briefly summed up.

On the report's recommendations being put to the vote there voted FOR: a substantial majority; AGAINST: 0; ABSTENTIONS; 1. It was therefore **RESOLVED** that:-

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- (a) Rick O’Farrell be appointed as the Interim Head of Paid Service and Chief Executive on a temporary basis effective from 1st August 2022;
- (b) the remuneration for the post of Interim Head of Paid Service and Chief Executive be agreed at a rate of £195,000.00 per annum with access to staff benefits in line with all Council employees; and
- (c) it be noted that there are no objections from the Leader or Cabinet to the appointment.

5

CHAIR.....

DATE.....

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